84-1918

Office - Supreme Court, U.S.
FILED
NOV 14 1984
ALEXANDER L. STEVAS,
CLERK

CASE NO. A-247

UNITED STATES SUPREME COURT

IVEN L. FELT and WILMA FELT,

Petitioners/Appellants

v

FIRST BANK OF SOUTH DAKOTA

ON WRIT OF CERTIORARI FROM
THE EIGHT CIRCUIT COURT OF APPEALS

Iven L. Felt
Wilma Felt
Rt. 2, Box 787
Hettinger, North Dakota 58639
Phone No. (605) 855-2340

CASE NO. A-247

UNITED STATES SUPREME COURT

IVEN L. FELT and WILMA FELT,

Petitioners/Appellants

v

FIRST BANK OF SOUTH DAKOTA

ON WRIT OF CERTIORARI FROM
THE EIGHT CIRCUIT COURT OF APPEALS

Iven L. Felt
Wilma Felt
Rt. 2, Box 787
Hettinger, North Dakota 58639
Phone No. (605) 855-2340

QUESTIONS PRESENTED FOR REVIEW

Appellants come forward with the Questions for Review by this Most Honorable Court as a Pro Se litigant as follows:

(A) As the Order of the Court clearly shows, Plaintiffs in Case No. CIV 83-5166 were never given the opportunity to file an Amended Complaint making more definite their position as outlined herewith:

(1) As shown in Plaintiffs' Complaint the violation of the 4th, 5th, 7th, 14th Amendment of the United States Constitution which are also found in the Bill of Rights of the South Dakota State Constitution.

(2) That under Title 42 (USC) Section 1981, ,

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

(3) That under Title 42 (USC), Section 1983: Appellants derive jurisdiction under Civil Rights as follows:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in a civil action at law, suit in equity, or other proper proceeding for redress."

(4) Appellants having been deprived of Rights and Privileges as found in Title 42 (USC) Section 1985 have been injured severally by the United States District Court of South Dakota to-wit:

(2) "Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of

the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) "Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disquise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

(5) That under Title 42 (USC), Section 1986 the intense fear with the Defendants in Case No CIV 83-5166 in the United States District Court, having been made a part of said case and not allowed to be brought forward before the Court and a Jury is supported as follows:

"Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section (42 USCS 1985), are about to be commited, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action, and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefore, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the

provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

(6) That Appellants seeking civil remedy and denied same as the jurisdiction found heretofore is found as follows in Title 42 (USC), Section 1988 to-wit:

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "Civil Rights", and of Title "Crimes", for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the Court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of Sections 1977, 1978, 1979, 1980 and 1981 of the Revised Statutes (42 USCS 1981-1983, 1985, 1986), Title IX of Public Law 92-318 (20 USCS 1681 et seq.), or in any civil action or proceeding by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code (26 USCS 1 et seq.), or Title VI of the Civil Rights Act of 1964 (42 USCS 2000d et seq.), the Court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

(7) That Appellants showed the United States District Court for South Dakota, Western Division, jurisdiction under Title 15 (USC), Sections 1601 and 1602, that under the Short Title of the 1982 Amendment, the controlling Section of Federal Truth in Lending are 1602 and 1607, wherein clearly brings forward the Appellants violation of due process and equal protection of the laws as clearly found in 15 (USC) 1607 wherein references in text carries forth to the violations of Title 12 (USC), Banks and Banking as well as Title 42 (USC) and clearly inaugarates Title 18 (USC) Section 152:

"Concealment of assets; false oaths and claims; bribery. Whoever knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or from creditors in any case under Title 11, any property belonging to the estate of a debtor; or

Whoever knowingly and fraudulently makes a false oath or account in or in relation to any case under Title 11; or

Whoever knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty or perjury as permitted under Section 1746 of Title 28, United States Code, in or in relation to any case under Title 11; or

Whoever knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such claim in any case under Title 11, personally, or by agent, proxy, or attorney, or as agent, proxy, or attorney; or

Whoever knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under Title 11, with intent to defeat the provisions of Title 11; or

Whoever knowingly and fraudulently gives, offers, receives or attempts to obtain any money or property, remuneration, compensation, regard, advantage, or promise thereof, for acting or forbearing to act in any case under Title 11; or

Whoever, either individually or as an agent or officer of any person or corporation, in contemplation of a case under Title 11 by or against him or any other person or corporation, or with intent to defeat the provisions of Title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation; or

Whoever, after the filing of a case under Title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information, including books, documents, records, and papers, relating to the property or financial affairs of a debtor; or

Whoever, after the filing of a case under Title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court entitled to its possession, any recorded information, including books, documents, records, and papers, relating to the property or financial affairs of a debtor.

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(B) Title 18 (USC), Section 1001;

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

(C) Title (USC), Section 875;

(a) "Whoever transmits in interstate commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(b) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(c) Whoever transmits in interstate commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined not more than $500 or imprisoned not more than two years, or both.

(D) Title 18 (USC), Section 892:

(a) "Whoever, makes any extortionate extensions of credit, or conspires to do so, shall be fined not more than $10,000 or imprisoned not more than 20 years, or both.

(b) In any prosecution under this section, if it is shown that all of the following factors were present in connection with the extension of credit in question, there is prima facie evidence that the extension of credit was extortionate, but this subsection is nonexclusive and in no way limits the effect or applicability of subsection (a):

(1) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable, through civil judicial processes against the debtor

(A) in the jurisdiction within which the debtor, if a natural person, resided or

(B) in every jurisdiction within which the debtor, if other than a natural person, was incorporated or qualified to do business at the time the extension of credit was made.

(E) Title 18 (USC), Section 894:

(a) "Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means

(1) to collect or attempt to collect any extension of credit, or

(2) to punish any person for the nonrepayment thereof,

shall be fined not more than $10,000 or imprisoned not more than 20 years, or both.

(b) In any prosecution under this section, for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means.

(c) In any prosecution under this section, if evidence has been introduced tending to show the existence, at the time the extension of credit in question was made, of the circumstances described in section 892(b)(1) (18 USCS 892(b)(1)) or the circumstances described in section 892(b)(2) (18 USCS 892(b)(2)), and direct evidence of the actual belief of the debtor as to the creditors collection practices is not available, then for the purpose of showing that words or other means of communication, shown to have been employed as a means of collection, in fact carried an express or implicit threat, the court may in its discretion allow evidence to be introduced tending to show the reputation of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of the collection or attempt at collection."

(F) Title 18 (USC), Section 1341

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any

such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both."

(G) Title 18 (USC), Section 241:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years for life." "

(H) Title 18 (USC), Section 242:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an aiien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

(I) Title 18 (USC), Section 3231

"The District Courts of the United States shall have jurisdiction exclusive of the courts of the States, of all offenses against the laws of the United States..."

(8) That Appellants show under Title 28(USC) 1332, diversity of citizenship involving more than $10,000, jurisdiction is further based on 18 (USC) 1964 which follows to-wit:

(a) The District Courts of the United States shall have jurisdiction to prevent and restrain violations of Section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investment of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect

interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the Court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the Court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his busines or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the Defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States

9. That Appellants show Fraud and Racketeering is carried forward under 18 (USC), Sections 1964, 1341, and 1962 and states as follows:

The Appellants herein claim that the use of U.S. Mails to send out statements and bills to collect on this unlawful debt created by the bank constitutes mail fraud as defined in 18 (USC) 1341 which is incorporated in 18 (USC), Section 1961 as the definition of "racketeering" activity. Racketeering activity is a prohibited activity in 18 (USC), Section 1962 and pursuant to 18 (USC)1964.

10. That Appellants clearly showed by their Complaint the question of usury and racketeering which an Amended Complaint for more definite cause would have been stated if needed, shows the violations of Title 18 (USC) to-wit:

The Appellants herein state the allegations which incorporates Usury practices by the bank in collecting interest on an unlawful Debt. The Appellants restate the following allegations that the bank used the U.S. Mail Service to send out statements and bills to collect both principle and interest on the unlawful debt the consideration for which the bank created on its books. The bank's actions in doing this constitutes "Racketeering" activity within the meaning of 18 (USC) 1341 as defined in 18 (USC) 1961 which incorporates 18 (USC), Section 1341. This racketeering activity based on fraud and usury makes the bank liable to Appellants for treble damages pursuant to 18 (USC), Section 1964 (c) for violation of 18 (USC), Section 1961. The Appellants have paid the bank a total of

Accounting requested Forthwith in interest charges and principle since the loans were made. Since the only consideration risked by the bank was 3% of the total loan value or the sum of Accounting requested from the bank, the bank has collected unlawfully the sum of (total amount paid in principle and interest less 3%). The Appellants therefor are entitled to relief for three times that sum which will sustain the amount prayed for in lawsuit and the punitive damages in the sum of (three times the amount prayed for in lawsuit), so the bank will be discouraged from engaging in future unlawful activity.

11. That Appellants have found in Title 15 (USC), Section 1607, references and text, clearly were protected by the Farm Credit Act of 1971 found in Title 12 (USC), Section 2001 were subject to the references found in Title 15 (USC), quoted heretofor and protected as well in Title 7 (USC), Chapter 9, Section 181 et seq., which is left as quoted in the Equal Justice Under Law (Supreme Court in American Life) Revised Edition, Edited by the Supreme Court Historical Society, quote, "The Court gives the final word on the Law, or on the powers of government under Law, by the standards of the Constitution". Thus, the jurisdiction of the case herein solely is within the Courts of the Federal Judicial System which has been ignored by the lower Court without memorandum support within the Court Order issued by the United States District Court, the Honorable Andrew W. Bogue, or the Appellant Court of the Eighth Judicial District which has left the Appellants in dereliction of tnier Constitutional Rights and the Federal Statute Law unanswered herein.

12. That Appellants must refer again to the Supreme Court Historical Society's Equal Justice Under the Law, to Page 9, First Paragraph, "The Law on the Books says - Thus - and - so; but in spite of the fact the legislature passed it in due form, this law is void - it is unconstitutional and therefore no law at all". If the United States Court refuses to hear a law, then that Statute Law found in the Jurisdiction herein becomes no law and as found in Title 15 (USC), Section 1607(4)(B) "which is subject to the provision of Section 8(h) of the Federal Deposit Insurance Act 12 (USC) 1818(h) and shall be subject to judicial review as provided therein" is ignored and abused all in contravention of the 4th, 5th and 14th Amendments of the United States Constitution and the Bill of Rights of the South Dakota State Constitution, leaving Appellants derelict of due process and equal protection of the Laws.

13. That Appellants again must show the Supreme Court Historical Society's "Equal Justice Under Law", Page 10, First Paragraph, Second column, "Associate Justice Wm. J. Brennan, Jr. says: "...the Founding Fathers knew better than to pin down their descendants too closely. Enduring principles rather than

petty details were what they sought to write down. Thus it is that the Constitution does not take the form of a litany of specifices," wherein, the litany in this case is the depriving of a United States Citizen of his rights through the violation of United States Statute Code by Defendants as found in the Jurisdiction heretofore in a complete ignoring of the 4th, 5th and 14th Amendments of the United States Constitution wherein due process and equal protection of the Laws are guaranteed while invoking the violations of Title 42 (USC), Civil Rights and Title 18 (USC), the Criminal Code leaving Appellants to the mercies of an unwritten Code and System unwritten.

14. That Appellants in original Complaint utilized Title 15 (USC) 1602 automatically invoked Section 1735-f, 2602, 3401 of Title 12 (USC) as well as Section 5511 of Title 42 (USC) wherein under 1602(e) the term "credit" the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment, and under 1602(f) a creditor is clearly outlined as a party covered by not only the Statute Code but must abide by the 4th, 5th and 14th Amendments of the United States Constitution wherein the Honorable Daniel Webster argued the Dartmouth College case before the Supreme Court and won a landmark decision that protected private property rights and encouraged growth of business corporations in all branches of commerce and industry. Therefore the instant case draws upon this Historic Decision and brings forth the second paragraph on Page 13 of the book "Equal Justice Under Law" written by the Supreme Court Historical Society which states as follows: "Here are nine Judges whose Court is the arbiter of the American government-the umpire of the federal system. Their decisions represent a majority, if not all, of the members, but their awesome responsibility falls in the end on individual shoulders. As the late Associate Justice John Marshall Harlan explained: 'Under his Oath each member of the Court must decide each case as if he were its only judge' ".

15. Appellants note Title 15 (USC), Section 1602(b) refers to the Board of Governors of the Federal Reserve System wherein the transactions found in CIV 83-5166 in the United States District Court for the District of South Dakota, Western Division clearly showed the failure to disclose the use of Appellants equity by said Federal Reserve System where equity was transferred for the creation of money which is a violation of Title 12 (USC) 248a and a complete disobedience to the intent of Congress in the creation of the Federal Reserve Act specifically when one must consider Title 12 (USC) 348 and 349, wherein once again Appellants' Constitutional guarantees of the 4th, 5th and 14th Amendments are abridged by intent without due process and equal protection of the laws found in the heretofore paragraphs constituting a violation of Title 42 (USC),

Section 1983, 2201 through 2205 leaving Appellants nude of citizenship to the United States.

16. That Appellants are considered as farmers to be excluded from protection by Statute Law means interpretation of the law by the lower courts creates a distinctive class into slavery or a minority without the equal protection and due process of law guaranteed by the 4th, 5th and 14th Amendments of the United States Constitution and violates Amendment 13 where slavery nor involuntary servitude is placed as a punishment upon the Appellants herein. an open violation of said 13th Amendment and Title 42 (USC), Chapter 21 and Appellants denied their rights in the lower courts to redeem their positions as citizens of the United States by a direct denial of due process and equal protection of the laws.

17. That Defendant's herein, Case No. CIV 83-5166, United States District Court, District of South Dakota, attempt to use Section 1603 Title 15 (USC) to exempt agriculture transactions from Federal Truth in Lending, violates Section 1603 (3) wherein a security interest is taken in either real or personal property and attempt to eliminate Natural persons of citizenship which is a violation of Title 15 (USC) 1602(h) consequently establishes a Civil Rights violation found in 42 (USC), Chapter 21 wherein Plaintiffs herein are derelict of not only the Statute Code of the United States but the guaranteed rights of due process and equal protection of the laws established by the 4th, 5th and 14th Amendments of the United States Constitution.

18. That Plaintiffs herein were forced to sign notes and security agreements clearly as found as Exhibit "A"–"A-2" paragraphs 9, 10, and 11, wherein Plaintiffs had to agree to waiver of their rights of judicial process and offset without consideration is a violation of Title 15 (USC), Section 1693 1, 80b-15, 79z, 79z-1, and 78cc, wherein a waiver is void and illegal making said Notes and Security agreements void and illegal wherein the jurisdiction of the Courts herein sustained for both civil damages and criminal violation as well.

19. That as seen on Exhibit "A-2" signature of Plaintiffs spouse is absent wherein security instrument violates Title 15 (USC) 775, and 11691d wherein the creation of a valid lien signature of husband and wife is mandatory and automatically violates Title 42 (USC), Section 2000a.

20. That the right of Rescission was never given after 72 business hours of the original documentation of the security interest agreement, notes, and mortgages, violates Section 1635, Title 15 (USC) and 1641(c) and jurisdiction of the Court for such violation is found in 15 (USC) 1640, of the United States Federal Courts.

21. That Title 18 (USC), Section 152 (Fraudulent

Papers), the use of the Judicial System at any level by the use of supposedly legal instruments is the fraudulent use to take away citizens properties under full knowledge that said documentation violating the 4th, 5th and 14th Amendments of the United States Constitution and the Bill of Rights of the South Dakota Constitution wherein the jurisdiction of this case lies only within the jurisdiction of the United States Federal Courts.

22. That the 1980 and 1982 Amendments of Title 15 (USC) as found in Section 1603 do not cover the instant case since security agreements and instruments were all done prior to said Amendments wherein the Federal Truth in Lending all of which are in violation of Title 12 (USC), Section 1735 f-5, 2602, 3401, and Title 42 (USC), Section 5511, and 8221, wherein the jurisdiction can only be found in the United States District Court.

23. That when security agreements are not associated directly with a corresponding note, we have unsecured equity and transaction wherein adhesion prevails by a superior party upon an inferior party as the Defendants herein being the Superior party and Plaintiffs, the inferior party all which is void and illegal under the doctrine of the "Law of Contracts" making all transactions void and illegal, subject to civil review before a Court of Law.

24. That Defendants in the instant case used "applied" false promises in order to obtain signatures on improperly prepared documents makes said instruments void and illegal with no intent on the part of the Defendants to fulfill said promises wherein an applied contract as found under regulation Z of Title 12 (USC) becomes void and illegal, leaving Plaintiffs herein derelict of their Constitutional rights found in the 4th, 5th and 14th Amendments of the United States Constitution.

THEREFORE, Petitioners herewith have attempted to show the Most Honorable Court sufficient Jurisdiction for this case to have been heard in the lower Court, and follow with a Writ of Certiorari requesting the Court for said Writ to guarantee due process and equal protection of the laws by the Constitution of the United States supported by the Statute Law of the Land.

Dated this 4 day of January, 1985.

Iven L. Felt
Iven L. Felt, Petitioner Pro Se
Rt. 2, Box 787
Hettinger, North Dakota 58639

Wilma Felt
Wilma Felt, Petitioner Pro Se
Rt. 2, Box 787
Hettinger, North Dakota 58639

NOTARY PUBLIC
MARILYN CALDWELL
STATE OF COLORADO

STATE OF [illegible])
) SS.
COUNTY [illegible])

Subscribed and affirmed to before me this 4 day of Jan, 1985.

My Commission expires: March 13, 1988

Witness my hand and official seal: Marilyn Caldwell
NOTARY PUBLIC
145 S. Park Ave.
Ft Lupton, Colo 80621

INDEX

Jurisdiction	XXII
Question presented for review	II, XII, XIII
Writ of Certioriari	I, XIII
Notice of Service	XV

CASES

Amos v. Mosley 74 Fla 555, 77 So 619	10
Andrews v. Andrews 188 U.S. 14 (1903)	7
Antoni v. Greenhow 107 U.S. 769 (1883)	10
Bankers Trust v. Naler 229 N.Y.S. 2d 142	3
Bank of Vadosta v. Baird (C.C.A) 160 F. 642, 17 L.R.A. (N.S. 526)	2
Board of Commissioners v. Citizens' Trust & Sav. Bank 73 Ind App 76	2
Bowen v. Needles Nat. Bank 94 F. 925, 36 CCA cert denied, 20 S.Ct. 1024 176 U.S. 682, 44 L.Ed 637	3
Boynton v. State 64 So. 2d 536, 554 (1953)	13
Bute v. Illinois 333 U.S. 640, 92 L.Ed. 986, 68 S.Ct 763	7
Christensen v. Beebe 91 P. 129, 32 Utah 406	2
City Nat. Bank v. Morgan 258 S.W. 572	2
Community Fed. S. & L. v. Fields, 128 F. 2d	3
Connally v. General Const. Co. 255 U.S. 81	8
Cooke v. Iverson 122 N.W. 251	9
Craig v. Mo 4 Peters Reports 912	3
Dartmouth College Case 4 Wheat. U.S. 518, 4 Ed 629	6
Davidson v. New Orleans 96 U.S. 97, 24 L.Ed. 616	7, 10

F. & P.R. v. Richmond 3
333 S.ED 888
Farmers& Miners Bank v. Bluefield Nat'l Bank 1, 2
11 F. 2d, cert denied 271 U.S. 669, 46 S.Ct. 483
70 L.Ed 1141
Federal Intermediate Credit Bank v. L'Herrison 2
33 F. 2d 841
First Nat'l Bank of Montgomery v. Jerome Daly 3
State of Minn, Scott County, Township
of Credit River, (1968), Judge Mahoney,
Justice of the Peace
First Nat'l Bank of Tallapoosa v. Monroe 2, 8
135 Ga 614, 69 S.E. 1123, 32 L.R.A. (N.S.) 550
Fisher v. Pace, 8, 13
336 U.S. 155 at 167
Foretta v. California 13
June 30, 1975, LW 43
Garrison v. New York 9
21 Wall (88 U.S.) 196, 203 (1875)
Gothin v. Miller 8
514 F. 2d 125, C.A.N.Y. 1975
Hageman v. Moon 1
131 N.Y. 462, 30 N.E. 487
Houston County v. Martin 11
232 A l 511, 169 So 13
Howard & Foster Co. v. Citizens Nat'l 2
133 S.C. 202, 130 S.E. 758
International Harvestor Co. v. Kentucky 12
234 U.S. 216
Justice Wright and Justice Beck 12
27 l A 46 FF
Kansas Pac. Ray Co. v. Dunmeyer 1, 2, 3
19 Kan 542
Kirkland v. Bailey 3
155 S.E. 2nd 701
La Junta Production Credit Ass'n v. Toney Jensen & 5
Gene Hammit
Civ. Action 81-CV109, DC, Ortero County, Colorado
Lane v. Railey 3
280 KY 319, 133 S.W. 2nd 74
Leeper v. Texas 6
139 U.S. 462, II Sup. Ct. 577, 35 L.Ed 225
Livingston's Lessee v. Moore 9
7 Pet (32 U.S.) 469, 549 (1833)

Louisville & N.R. Co. v. Schnidt 177 U.S. 230, 20 S.Ct. 620, 44 L.Ed 747	7
Louisiana v. New Orleans 102 U.S. 203, (1880)	10
Magee Banks and Banking 3rd ed page 466	2
Maynard v. Hill 125 U.S. 190 (1888)	9
Merchants Bank v. Baird 160 F. 642	3
Missouri and Ark L. & M Co. v. Sebastion County 249 U.S. 170 (1919)	9
Moffit v. Kelly 218 U.S. 400 (1910)	9
Monongahela Navigation Co. v. United States 148 U.S. 312, 324 (1892)	12
Morley v. Lake Shore Railway Co 146 U.S. 162 (1982)	9
National Bank of Commerce v. Atkinson 55 Fed Rep 465	2
Dennis B. Nash & Linda L. Nash v. First Financial Sav. & Loan Ass'n 703 F. 2d 233	5
New Orleans v. New Orleans Water Works Co. 142 U.S. 79 (1891)	9
North Carolina v. Foy 2 Hay 310, 312, 5 N.Car. 57, 63 (1804)	12
Norton Grocery Co. v. People's Nat'l. Bank 144 S.E. 501, 151 Va 195	1
Odgen v. Saunders 12 Whear. (25 U.S.) 213 (1827)	9
Parsons v. Fox 179 Ga 605, 176 S.E. 642	3
Peoples Nat'l Bank. v. So. State etc Co. 192 N.C. 69, 133 S.E. 415	2
Ponce v. Housing Authority of Tulare County 389 F. Supp 635, D.C. cal 1975	8
Rayburn v. Rowen Memorial Hosp., Inc. 269 N.S. 1, 13, 152 S.E. 1d 485, 493 (1967)	6
Re Dorsey 7 Porter (Ala) 293-377-378 (1883)	12
Rice & Hutchins Atlanta Co. v. Commercial Nat'l Bank 18 Ga App 151	2
Riley v. Carter 165 Okla 262, 25 P 2d 666, 77 ALR 1018	10

Seligmaa v. Charlottsville Nat'l Bank 3
C.C.Va 1879, 3 Hughes 647, Fed Case No. 12, 642
Sherar v. Cullin 9
481 F.2d 946, 1973
Slote v. Board of Examiners 10
274 N.Y. 367, 9 NE 2d 12, 112 ALR 660
Smith v. Treuhart et al 1
223 NYS 481
Smith v. U.S. 13
502 F.2d 512, (C.A. Tex 1974)
State ex Rel. Sweezer v. Green 7
360 Mo. 1249, 232 SW 897
State v. Neilon 2
73 Pac 321, 43 Ore 168
State v. Rose 7, 12
33 Del 168, 132 A 864, 45 Ala 85
State v. Simon 7
2 L Spears 761, 767 (1884)
Taylor v. Porter 7
4 Hill 140, 146 (1843)
United States ex rel Von Hoffman v. Quincy 10
4 Wall. (71 U.S.) 535, 554 (1867)
United States v. Kuwzbza 8
(DC-Cal) 56 F Supp 716
United States v. Neifert White Co. 2
247 Fed Supp 878
United States v. Reese 8
92 U.S. 214
United States v. White County Bridge Comm 8
2 FR Serv 2d 107, 275 F.2d 529 (CA7 1950)
Van Horne v. Dorrance, 11
OC Pa 1 Ball 304, 1 L.Ed. 391, F. Cas. No. 16, 857
Watson v. Memphis 10
375 US 526, 10 L. Ed. 529, 83 S. Ct. 1314
Yates v. Hoffman Estates 6
(1962, DC Ill) 209 F. Supp 757
Yucong Eng v. Trinidad 8
271 U.S. 500
Young v. Hembree 1
73 p. 2d 393
Zane v. Hamilton County 9
189 U.S. 370, 381 (1903)

LAW OF THE LAND
United States Constitution

Amendment 4 1, 4, 5, 6
Amendment 5 1, 4, 5, 6

Amendment 7	II
Amendment 13	XII
Amendment 14	II, X, XI, XII, XIII, 4, 5, 6

STATUTES

Title 7, Chapter 9, Section 181 et seq.	X
Title 12,	IV, 4
Title 12, Section 226	4, 5
Title 12, Section 248(a)	XI
Title 12, Section 348	XI
Title 122, Section 349	XI
Title 12, Section 1464	5
Title 12, Section 1735f-5	XI, XIII
Title 12, Section 1818(h)	X
Title 12, Section 2001	X
Title 12, Section 2601	XXII
Title 12, Section 2602	XI, XIII
Title 12, Section 3401	XI, XIII
Title 15,	X, XXII, 4
Title 15, Section 4	XXII
Title 15, Section 5	XXII
Title 15, Section 10	XXII
Title 15, Section 15	XXII
Title 15, Section 16	XXII
Title 15, 57(b)	5
Title 15, Section 77a	XXII
Title 15, Section 77ccc(7)	XXII
Title 15, Section 78aa	XXII
Title 15, Section 78b	XXII
Title 15, Section 78cc	XII
Title 15, Section 78cc(b)	XII
Title 15, Section 78cc(c)	XXII
Title 15, Section 79r	XXII
Title 15, Section 80a-2 et al	XXII
Title 15, Section 80a-41(c)	XXII
Title 15, Section 80a-41(e)	XXII
Title 15, Section 80a-46	XXII
Title 15, Section 80b-2-18	XXII
Title 15, Section 80b-15	XII
Title 15, Section 79z	XII
Title 15, Section 79z-1	XII, 5
Title 15, Section 775	XII

Title 15, Section 1331 et al	XXII
Title 15, Section 1314 et al	XXII
Title 15, Section 1601	XXII, IV, 1, 5
Title 15, Section 1602	XXII, IV, XI, 1, 4, 5
Title 15, Section 1602(b)	XI
Title 15, Section 1602(e)	XI, 4
Title 15, Section 1602(f)	XI
Title 15, Section 1602(h)	XII
Title 15, Section 1603	XII, XIII
Title 15, Section 1603 (3)	XII
Title 15, Section 1604	5
Title 15, Section 1605	5
Title 15, Section 1606	5
Title 15, Section 1607	XXII, IV, X, 1, 4, 5
Title 15, Section 1607(4)(B)	X, 5
Title 15, Section 1610	5
Title 15, Section 1611	5
Title 15, Section 1631	5
Title 15, Section 1632	5
Title 15, Section 1635	XII, 1, 5
Title 15, Section 1637	1, 5
Title 15, Section 1638	1, 5
Title 15, Section 1639	1
Title 15, Section 1640	XIII, XXII, 1
Title 15, Section 1641	5
Title 15, Section 1641(c)	XXI
Title 15, Section 1665(a)	5
Title 15, Section 1681p	XXII
Title 15, Section 1691a	4
Title 15, Section 1691d	XXII, XII, 1, 5, 6
Title 15, Section 1691e	XXII
Title 15, Section 1691e(a)	5
Title 15, Section 1691e(b)	5
Title 15, Section 1691e(c)	5
Title 15, Section 1691e(d)	5
Title 15, Section 1691e(e)	5
Title 15, Section 1691e(f)	5
Title 15, Section 1692	5
Title 15, Section 1692k	XXII
Title 15, Section 1693l	XXII, XII
Title 15, Section 1693l(m)	XXII
Title 18,	II, XI
Title 18, Section 152	IV, XII, XXII, 1
Title 18, Section 241	VIII, XXII, 1
Title 18, Section 242	VIII, XXII

Title 18, Section 875	VI, XXII
Title 18, Section 892	VI, XXII
Title 18, Section 894	VII, XXII
Title 18, Section 1001	V, XXII
Title 18, Section 1341	VII, IX, XXII
Title 18, Section 1961	IX
Title 18, Section 1962	VIII, IX
Title 18, Section 1964	VIII, IX
Title 18, Section 1964(c)	IX
Title 18, Section 3231	VIII, XXII
Title 28,	
Section 1331	1
Section 1332	VIII, XXII, 1
Section 1335	XXII
Section 1336	XXII
Section 1337	XXII
Section 1654	1
Title 28,	
Rule 15-3	XXII
FRAP Rule 7	1
FRCIVP Rule 7	1, 5
Rule 11	1
Title 42,	IV, XI, 1, 4
Title 42, Chapter 21	XII, 5, 12
Title 42, Section 1981	II, XXII
Title 42, Section 1983	II, XI, XXII
Title 42, Section 1985	II, XXII
Title 42, Section 1986	III, XXII
Title 42, Section 1987	XXII
Title 42, Section 1988	1. IV
Title 42, Section 2000a	XII, 5
Title 42, Section 2201	XI, XXII
Title 42, Section 2205	XI, XXII
Title 42, Section 5511	XI, XIII
Title 42, Section 8221	XIII
16 Am 2d Const Law, Sect 11	13
Commentaries, Book 1, Chapter, Page 135	6
Equal Justice Under Law	X, XI
UCC 3-303:1	3

JURISDICTION STATEMENT

COMES NOW the Appellants showing the Most Honorable Court Jurisdictional Statement as found in Rule 15-3, Title 28 (USC) as follows:

1. Title 42 (USC) Sections 1981, 1983, 1985, 1986, 1987, 2201 through 2205;
2. Title 28 (USC), Sections 1331, 1332, 1335, 1336, and 1337;
3. Title 15 (USC) Section 4, 5, 10, 15, 16, 57b (b), 771, 77ccc (7), 78aa, 78b (b), 78cc(b) (c), 79r, 80a-2 et al, 80a-41(c) (e), 80a-46, 80b-2 (18), 1311 et al, 1314 et al, 1601, 1602, 1607, 1640, 1681p, 1691d, 1691e, 1692k, 1693l m;
4. Title 12 (USC) 2601 et seq.;
5. Title 18 (USC), Sections 1001, 875, 892, 894, 1341, 241, 242, 3231;
6. Amendment 5, United States Constitution;
7. Amendment 7, United States Constitution;
8. Amendment 14, United States Constitution:

WRIT OF CERTIORARI

COME NOW the Petitioners respectfully requesting the Most Honorable Court for a Writ of Certiorari upon the lower Court named herein to protect due process and equal protection of the Laws guaranteed by the 4th, 5th and 14th Amendments of the United States Constitution outlined herein:

1. That Petitioners are citizens and natural persons of the State of South Dakota of the United States of America owning property both real and personal in Perkins and Harding County, State of South Dakota and coming forward through the actions of the Most Honorable Andrew W. Bogue, Chief Judge of the United States District Court for the State of South Dakota who has dismissed a Civil petition without a hearing or without ability to exhaust full judicial rights within said District Court.

2. That Petitioners are Pro Se litigants should by courtesy have been extended full rights of the use of the Court as found in Title 28 (USC) 1654, Rules of Appellate Procedure of Rule 7, and Rule 11 wherein Petitioners herein move before the Court.

3. That Petitioners came forward with litigation before the United States Court using the 4th, 5th and 14th Amendments; Title 28 (USC), Section 1331; Title 15 (USC), Sections 1601, 1602, 1607, 1635, 1637, 1638, 1639, 1640; Title 42 (USC), Chapter 21, Civil Rights; Title 18 (USC), Section 152, Fraudulent Papers, but were never allowed to pursue argument, wherein due process and equal protection of the laws became moot, leaving Petitioners derelict of their rights.

4. That the United States Federal Courts on 21 cases as listed below as case law analysis that can be seen that the case law citations below that both bank credit and bank checks are not lawful money and are not legal tender. Both the checks and bank credit are not evidences of money, but evidences of debts–debts which the banks owe the people. A check is a promise to pay so many dollars. The expression that Banks create money only applies to common usage and has no basis in law as seen by the cases listed below.

(a) "A check is merely an order on a bank to pay money." Young v. Hembree, 73 P.2d 393.

(b) "Both notes and checks are acknowledgements of indebtedness and promise of payment." Hegeman v. Moon, 131 N.Y. 462, 30 N.E. 487. Smith v. Treuhart et al., 223 N.Y.S. 481.

(c) "In the federal courts, it is well settled that a national bank has no power to lend its credit to another by becoming surety, indorser, or guarantor for him." Farmers and Miners Bank v. Bluefield Nat'l Bank, 11 F.2d 83, 271 U.s

(d) "Checks, drafts, money orders, and bank notes are not

lawful money of the United States." State v. Neilon, 73 Pac. 321, 43 Ore. 168.

(e) "The powers of a national bank are limited. They are determined by statute, section 5136, Revised Statutes (Title 12, Sec. 24, USC; 12 USCA Sec. 24). It is not within those statutory powers for a national bank, even though solvent, to lend its credit to another in any of the various ways in which that might be done. Magee, Banks and Banking (3rd ed), p 466; Bank of Valdosta v. Baird (D.D.A. 8) 160 F. 642, 17 L.R.A. (N.S. 526); Farmers Bank v. Bluefield Nat. Bank, 11 F. 2d 83, certiorari denied 271 U.S. 669, 46 S.Ct. 483, 70 E.Ed. 1142; Peoples Nat. Bank v. So. States, etc. Co., 192 N.C. 69, 133 S.E. 415, 49 A.L.R. 519; Board of Commissioners v. Citizens' Tr. & Sav. Bank, 73 Ind. App. 76, 123 N.E. 130; City Nat. Bank v. Morgan, 258 S.W. 572; Rice & Hutchins Atlanta Co. v. Commercial Nat. Bank, 18 Ga. App 151, 88 S.E. 999; Howard & Foster Co. v. Citizens Nat. Bank, 133 S.C. 202, 130 S.E. 758. Federal Intermediate Credit Bank v. L'Herrison, 33 F.2d 841.

(f) "The provisions referred to do not give power to a national bank to guarantee the payment of the obligations of others solely for their benefit, nor is such power incidental to the transaction of the business of banking. A bank can lend its money, but not its credit." First National Bank of Tallapoosa v. Monroe, 135 Ga. 614, 69 S.E. 1123, 32 L.R.A (N.S.) 550.

(g) "A national bank, under federal law being limited in its powers and capacity, cannot lend its credit by guaranteeing the debt of another, and all such contracts intered into by its officers are ultra vires..." Howard & Foster Co., v. Citizens' Nat. Bank of Union, 133 S.C. 202, 130 S.E. 758.

(h) "A bank may not lend its credit to another, even though such a transaction turns out to have been of benefit to the bank, and in support of this a list of cases might be cited, which would look like a catalog of ships." Norton Grocery Co. v. People's Nat. Bank, 144 S.E. 501, 151 Va 195.

(i) "There is no doubt but what the law is that a national bank cannot loan its credit or become an accomodation endorser." National Bank of Commerce v. Atkinson, 55 Fed Rep 465.

(j) "A promise to pay cannot, by argument, however ingenius, be made the equivalent of actual payment..." Christensen v. Beebe, 91 P. 129, 32 Utah 406.

(k) "In order to constitute a loan there must be a contract whereby in substance one party transfers to the other a sum of money which the other agrees to repay absolutely together with such additional sums as may be agreed upon for its use." United States v. Neifert White Co., 247 Fed Supp 878.

(l) "The word 'money' in its usual and ordinary acceptation means gold, silver, or paper money used as a circulating medium of

exchange, and does not embrace notes, bonds, evidences of debt, or other personal or real estate." Lane v. Railey, 280 Ky 319, 133 S.W. 2nd 74.

(m) "In Parsons v. Fox, 179 Ga. 605, 176 S.E. 642, the court said: " 'A loan may be defined as the delivery by one party to, and the receipt by another party of, a sum of money upon an agreement, express or implied, to repay the sum with or without interest'." Kirkland v. Bailey, 155 S.E. 2nd 701.

(n) "A national bank...cannot lend its credit to another by becoming surety, endorser, or guarantor for him, such an act being ultra vires..." Merchants' Bank v. Baird, 160 F. 642.

(o) "Act is ultra vires when corporation is without authority to perform it under any circumstances or for any purpose. By doctrine of ultra vires a contract made by a corporation beyond the scope of its corporate powers is unlawful." Community Fed. S. & L. v. Fields, 128 F2d 705 Blacks Law Dictionary - 5th Edition - 1979.

(p) "A bank is not a holder in due course upon merely crediting the depositors account." Bankers Trust v. Nagler, 229 NYS 2d 142.

(q) "A holder who does not give value cannot qualify as a holder in due course." UCC 3-303:1.

(r) "When a contract is once declared ultra vires, the fact that it is executed does not validate it, nor can it be ratified, so as to make it the basis of suit or action, nor does the doctrine of estoppel apply." F & P.R. v. Richmond, 133 S.E. 888 as quoted in Norton Grocery Co. v. Peoples Nat. Bank, 144 S.E. 501, 151 Va 195.

(s) "A national bank has no power to lend its credit by guaranteeing a letter of credit." Seligmaa v. Charlottsville Nat. Bank, C.C. Va. 1879, 3 Hughes 647, Fed Case No. 12, 642.

(t) "A national bank has no power to lend its credit..." Bowen v. Needles Nat. Bank, 94 F. 925, 36 C.C.A. 553, certiorari denied 20 S.Ct. 1024, 176 U.S. 682, 44 L.Ed. 637.

(u) "It has never been doubted that a Note given on a Consideration which is prohibited by Law is void. It has been determined, independent of Acts of Congress, that sailing under the license of an enemy is illegal. The emmission of Bills of Credit upon the books of private corporations for the purposes of private gain is not warranted by the Constitution of the United States and is unlawful. (See Craig v. Mo. 4 Peters Reports 912,) This Court can tread only that path which is marked by duty." First National Bank of Montgomery v. Jerome Daly, State of Minn., Scott County, Township of Credit River (1968), Martin Mahoney, Justice of the Peace.

5. That Petitioners were forced to sign invalid instruments wherein all instruments were not duly signatured by both parties

violates not only the intent to create money but to defer its payment as found in Title 15 (USC) 1602 (e) "the term credit means the right granted by a creditor to a debtor to defer payment of debt or to incure debt and defer its payment" which must be considered herein since instruments and documents used deter legality by their substance and lack of full procedure required under the Statutes of Federal Truth in Lending found in Title 15 (USC) 1602 and 1607 as well as the Law of Contracts used in the normal course of business transactions.

6. That Petitioners transactions with Defendants are prior to Amendments to the Consumer Protection Act and the Consumer Credit Cost Disclosure of 1981 brings the subject matter directly under the Statutes of Fraud and complete protection of Title 15 (USC), Title 12 (USC), Title 42 (USC), wherein Petitioners have been left in a position of second class citizenship without benefit of due process and protection of the Laws.

7. That Petitioners were never given the opportunity to file an Amended Complaint wherein assure a full meaningful disclosure of credit terms so that the Consumer would be able to compare most readily the various credit terms available to them and avoid the uninformed use of credit was ignored leaving the interpretation solely in the hands of Defendants without question supported by a single Federal Judge who refused hearing of Petitioners position whereby Petitioners lost due process and equal protection of the Laws guaranteed by the 4th, 5th and 14th Amendments of the United States Constitution and the Bill of Rights of South Dakota State Constitution.

8. That in 1980 the "DEPOSITORY INSTITUTE DEREGULATION AND MONETARY CONTROL ACT known as the Reform Act imposture to control the Revised Regulation Z" was established specifically to protect Consumers while warning Creditors not to mix and match requirements of Regulation Z which is part of Title 12 (USC), Section 226, wherein Petitioners have been placed in just such a vacuum without opportunity to be heard.

9. That as Petitioners showed in a very short complaint there was willful knowledge of violations of Federal Truth in Lending which in even the 1981 Amendments added for erroneous disclosures a criminal provision after discovery by Petitioners but again by dismissal on the part of Chief Judge of the South Dakota Court, Western Division, brought about a cloud as to Petitioners rights and due process while leaving subject matter of Petitioners Complaint seemingly buried under Judicial Mandate leaving said Petitioners at the mercy of an unmerciful Court.

10. That Petitioners being a debtor carried even further into Title

15 (USC) wherein the equal Credit opportunity of Section 1691a et al., 1691d, and the debt Collection Practices Act of 1692 and Title 12 (USC), Section 1464 were ignored by Petitioners lack of opportunity of hearing before the court. Such opportunity is guaranteed to Petitioners under 15 (USC) 1691e (a), (b), (c), (d), (e), and (f) for punitive and actual damages, declaratory relief, attorney's fees and costs, and compliance which have all been ignored while fully known by the lower Court.

11. That in Rule 7, U.S. Rules of Civil Procedure Title 28 (USC) a Motion to Dismiss, without having filed an Answer to Petitioners Complaint, is a demurrer and said Bad Faith Demurrer with Defendants knowingly having violated the jurisdiction of Petitioners Complaint of failing to openly disclose is supported by the United States Court of Appeals for the Seventh Circuit, 703 F.2d 233, Dennis B. Nash and Linda L. Nash, Plaintiffs v. First Financial Savings and Loan Associations, Defendant; No. 82-1874, Argued November 29, 1982; March 17, 1983, which is supported of the petition of Petitioners herein, which is a ruse to deliberately and intentionally bypass the merits of the Law.

12. That Petitioners show the Honorable Court, Civ Action No. 81-CV109, District Court, Otero County, Colorado La Junta Production Credit Association v. Tony Jensen and Gene Hammit, "We, the Jury, find for the Defendant, Gene Hammit, upon Plaintiffs claim and further find for the Defendant on Defendant's counterclaim of fraud and award the Defendant damages of $72,929.47 and exemplary damages of $10,000.00 against the Plaintiffs", significant in the fact that a creditor proceeded against a debtor as Petitioners herein and failed to disclose the findings of Law so clearly written under the jurisdiction Petitioners have used to signify the basic fundamentals of their Original Complaint.

13. That a mortgage or note is considered a security instrument whereby said security is drawn against real or personal property and said security is transferred from one state to another for the creation of money by the Federal Reserve System invokes 15 (USC) 77a et al., wherein said failing to disclose fully to Petitioners openly violated 15 (USC), Sections 1601 1602, 1604, 1605, 1606, 1607, 1610, 1611, 1631, 1632, 1635, 1637, 1638, 1641, 1665a; Title 12 (USC) 226, and the formula known as Regulation Z wherein Petitioners have been in threat of losing their real and personal properties without due process and equal protection of the Laws, a violation of the 4th, 5th and 14th Amendments of the United States Consitution and the Bill of Rights of the South Dakota State Constitution.

14. That failure of obtaining spouses signature is a civil rights violation of 15 (USC 775, and 1691d while also a violation of Title 42 (USC), Chapter 21, Section 2000a wherein one party is being forced

to lose personal and real property without having agreed to such and the creation of a valid lien requires both signatures of both husband and wife as found in 15 (USC), Section 1691d but such is not the case since all documents and instruments do not contain such signature which leaves Petitioners in a state of illegal seizure without the benefit of due process and equal protection of the Laws as found in the 4th, 5th and 14th Amendments of the United States Constitution guaranteed rights.

15. That Petitioners have been forced as Pro Se litigants to a chameleon interpretation of the Law can only be interpretated as there being a dual purpose of the law as Sir William Blackstone said: "To bereave a man of Life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole kingdom" (Commentaries Book 1, Chap 1, Pg. 135) and a this case was refused Judicial Process we have a Non-Judicial action as found in YATES V. HOFFMAN ESTATES, (1962, DC Ill) 209 F. Supp 757, "When a Judge exceeds his jurisdiction and grants or denies that beyond his lawful authority to grant or deny, he has perpetrated a 'Non-Judicial' Action", blockaded from attempting to protect their rights under the Law.

16. That the Law carries no immunity to anyone is found in RAYBURN V. ROWEN MEMORIAL HOSPITAL, INC., 269 N.S. 1, 13, 152 SE 1d 485, 493 (1967). "Immunity fosters neglect and breeds irresponsibility while liability promotes care and caution, which caution and care is owed by the government to its people", consequently we find Petitioners are being penalized without the ability to protect not only their God given rights but their Judicial rights of the Federal Court System herein.

17. That the Petitioners have been refused due process can only be found by the following case law as such:

(A) "By the Law of the Land is more clearly intended the general law, a Law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial." Dartmouth College Case, 4 Wheat, U.S. 518, 4 Ed 629.

(B) "Law in it's regular course of administration through courts of Justice is due process." Leeper v. Texas, 139 U.S. 462, II Sup Ct. 577, 35 L.Ed. 255.

(C) "Due Course of Law, this phrase is synonymous with "Due process of Law' or 'Law of Land' and means Law in its regular course of Administration through courts of Justice." Kansas Pac. Ry. Co. v. Dunmeyer 19 Kan 542.

(D) Amendment V of the Constitution of the United States provides: "No person shall be deprived of Life, Liberty, or Property without due process of law. A similar provision exists in all

the state Constitutions; the phrases "Due course of law", and the "Law of the Land", are sometimes used; but all three of these phrases have the same meaning and that applies conformity with the ancient and customary laws of the English people or laws indicated by Parliment. Davidson v. New Orleans, 96 U.S. 97, 24 L.Ed. 616.

(E) The adoption of the XIV Amendment completed the circle of protection against violations of the provisions of Magna Carta, which guaranteed to the Citizen his Life, Liberty, and Property against interference except by the "Law of the Land", which phrase was coupled in the petition of right with Due Process of Law. The latter phrase was then used for the first time, but the two are generally treated as meaning the same. This security is provided as against the United States by the XIV and Vth Amendments and against the states by the XIV Amendment. Davidson v. New Orleans, 96 U.S. 97, 24 L.Ed 616.

(F) The essential elements of Due Process of Law are notice and opportunity to defend. Simon v. Craft, 182 U.S. 427, 436, 21 Sup. Ct. 836, 45 L.Ed. 1165; "In determining whether such rights were denied, we are governed by the substance of things and not by mere form, id., Louisville & N.R.Co. v. Schnidt, 177 U.S. 230, 20 Sup. Ct. 620, 44 L.Ed. 747.

(G) The Due Process guarantee assures that everyone shall have his Life, Liberty, Property, and Immunities protected by the general rules characteristic of, basic to, and existing in, our society under our system of jurisprudence. State ex Rel. Sweezer v. Green, 360 Mo. 1249, 232 SW 897.

(H) "Law of the Land" means "The common law"–Justice O'Neil in State v. Simmon, 2 Spears 761, 767, (1884). Also Justice Bronson in Taylor v. Porter, 4 Hill 140, 146 (1843).

(I) An Illinois case points out that a Law or procedure is Due Process of Law only when: 'They do not conflict with the fundamental principles of Liberty and Justice which lie at the base of all civil and political institutions'. Bute v. Illinois, 333 US 640, 92 L.Ed. 986, 68 S. Ct. 763.

(J) Due Process of Law as a guarantee of trial by jury in the judicial branch of government..." The words 'Law of the Land' or 'Due Process of Law' when used in considering the property rights of individuals, means summons or notice, such as is ordinarily given upon the institution of a suit, due appearance of the parties in interest, pleading facts in issue, and a determination thereof by a Jury." State v. Rose, 33 Del. 168, 132, A 864, 45 Ala 85.

(K) When the responsibilities of lawmaker, prosecutor, judge, jury and disciplinarian are thrust upon a judge he is obviously incapable of holding the scales of justice perfectly fair and true and

reflecting impartially on the guilt or innocense of the accused. He truly becomes the judge of his own cause. The defendant... is thus denied an indispensable element of the due process of law. Fisher v. Pace 336, U.S. 155 at 167.

(L) Due process clause not only applies when one's physical liberty is threatened by also where a person's good name, reputation, honor or integrity are at stake. Gotkin v. Miller, 514, F. 2d 125 C.A. N.Y. 1975.

(M) The purpose of a due process hearing is to safeguard from deprivation the liberty or property rights of protected persons, and this can only be done where the requisite hearing is held before the decision maker so that the decision maker can sift through the facts, weigh the evidence and reach the appropriate conclusion. U.S.C.A. Const Amend 5, Ponce v. Housing Authority of Tulare County, 389, F. Supp 635, D.C. Cal 1975.

(N) A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of "Due process of Law." Conally v. General Construction Co. 255 US 81; International Harvester Co. v. Kentucky 234 US 216; United States v. Reese 92 US 214: Yucong Eng v. Trinidad 271 US 500.

(O) A Complaint will not be dismissed for failure to state a claim if there is a possibility that Plaintiff could obtain some relief on the facts stated, even though Plaintiff may not have prayed for the appropriate relief." 12B: 34. U.S. v. White County Bridge Commission, 2FR Serv 2d 107, 275 F2d 529 (CA 7 1950).

(P) "A Complaint will not be dismissed for failure to state a claim, even though inartistically drawn and lacking in allegations of essential facts, it cannot be said that under no circumstances will the party be able to recover." 12B: 34 FR Serv 29, 19 FD 511 (DCED Pa 1958).

(Q) "The due process guaranteed by this Amendment means that there can be no proceeding against Life, Liberty or Property which may result in the observance of those general rules-established in our system of Jurisprudence for the security of private rights." U.S. v. Kuwzbzva (DC-CAL) 56 F Supp 716.

all of which petitioners herein show a support for their guaranteed rights of Due Process, which they have been deprived, under the Constitution of the United States by the action of the lower Court.

18. Petitioners had raised the question of the Constitutional rights regarding obligation of contracts based upon United States Code heretofore and show "there can be no Sanctions or Penalty

imposed upon one because of his exercise of Constitutional rights"; Sherar v. Cullen, 481 F.2d 946, 1973, under the Constitution of the United States of America, analysis and interpretation annotation of cases decided by the Supreme Court of the United States to June 29, 1972 page 405, PRIVATE CONTRACTS–the term "Private Contracts" is, naturally, not all-inclusive. A Judgment, though granted in favor of a creditor, is not a contract in the sense of the constitution [4], nor is marriage [5]. And whether a particular agreement is a valid contract is a question for the Courts, and finally for the Supreme Court, when the protection of the contract clause is invoked.[6]

[4] Morley v. Lake Shore Railway Company, 146 U.S. 162 (1982); New Orleans v. N.O. Water Works Co., 142 U.S. 79 (1891); Missouri and Ark L. and M. Co. v. Sebastion County, 249 U.S. 170 (1919). But cf. Livingston's Lessee v. Moore, 7 Pet (32 U.S.) 469, 549 (1833); and Garrison v. New York, 21 Wall, (88 U.S.) 196, 203 (1875); suggesting that a different view was earlier entertained in the case of judgments in actions of debt.

[5] Maynard v. Hill, 125 U.S. 190 (1888); Dartmouth College v. Woodward, 4 Wheat. (17 U.S.) 518, 629 (1819) cf Andrews v. Andrews, 188 U.S. 14 (1903). The question whether a wife's rights in the community property under the laws of California were of a contractual nature was raised but not determined in Moffit v. Kelly, 218 U.S. 400 (1910).

[6] New Orieans v. New Orleans Water Works Co., 142 U.S. 79 (1891); Zane v. Hamilton County, 189 U.S. 370, 381 (1903).

19. Petitioners jeopardize to protect their Constitutional rights must show Petitioners as Pro Se must be considered as Cooke v. Iverson, 122, N.W. 251, "It cannot be assumed that the framers of the Constitution and the people who adopted it, did not intend that which is the plain import of the language used. When the language of the Constitution is positive and free of all ambuguity, all Courts are not at liberty, by a resort to the refinements of legal learning, to restrict its obvious meaning to avoid the hardships of particular cases. We must accept the Constitution as it reads when its language is unambiguous, for it is the mandate of the sovereign power," and such is pertinent in the instant case.

20. Petitioners must show that Chief Justice Marshal's definition on this occasion of the obligation of a contract as the law which binds the parties to perform their undertakings was not free from ambiguity, owing to the uncertain connotation of the term law and as he found in Odgen v. Saunders, 12 Wheat. (25 US.) 213 (1827). He also posed the question of what would happen to the obligation of contracts clause if States might pass Acts declaring that all

contracts made subsequently thereto should be subject to Legislative control, 9 id., 353-354; wherein Petitioners in their Complaint had raised the question but of which the lower Court refused to hear, leaving Petitioners void of their Constitutional Rights of due process and equal protection of the Law.

21. Petitioners must refer to Amos v. Mosley, 74 Fla 555, 77 SO 619, "If the legislature clearly misinterprets a Constitutional provision, the frequent repetition of the wrong will not create a right". Petitioners then must inquire if the same is not true to the judicial where in Antoni v. Greenhow, 107 U.S. 769 (1883) "on the other hand, a Statute which withdrew the judicial power to enforce satisfaction of a certain class of judgments was held invalid", Louisiana v. New Orleans, 102 U.S. 203, (1880) the words of the Court "Every case must be determined upon its own circumstances", United States ex rel Von Hoffman v. Quincy, 4 Wall, (71 U.S.) 535, 554 (1867). Petitioners must believe that their case is its own circumstance and as the Court later added "In all such cases the question becomes reasonableness also". To hold that mortgages are entitled under the contract clause to retain the advantages of a forced sale would be to dignify into a constitutionally protected property right their chance to get more than the amount of their contracts... The contract clause does not protect such a strategical, procedural advantage and since Defendant's failed to grant the Right of Rescission, Full Disclosure, equity disclosure under adhesion, Petitioners Constitutional Rights under the obligation of contracts have been violated.

22. Petitioners show Supreme Court ruling Riley v. Carter, 165 Okla 262, 25 P 2d 666, 77 ALR 1018: "Economic necessity cannot justify a disregard of cardinal constitutional guarantee," wherein economic necessity cannot be used or the violations of the Law of Contracts has been incurred without Petitioners having the rights of due process and equal protection which can be found in Slote v. Board of Examiners, 274 N.Y. 367, 9 NE 2d 12, 112 ALR 660.

"Disobedience or evasion of a Constitutional mandate may not be tolerated, even though such disobedience may, at least temporarily promote in some respects the best interests of the public."

Watson v. Memphis, 375 US 526, 10 L. Ed. 529, 83 S.Ct. 1314:

"Constitutional rights may not be denied simply because of hostility to their assertion and excercise; vindication of conceded Constitutional rights cannot be made dependent upon any theory that it is less expensive to deny them than to afford them",

in places what Abraham Lincoln said on September 11, 1858—"Accustomed to trample on the rights of others, you have lost the genius

of your own independence and become the fit subject of the first cunning tyrant who rises among you", which is pertinent to this case before the Most Honorable Court.

23. Petitioners must notice the Most Honorable Court to the tragic incident of October 23, 1984 at Cairo, Nebraska, where through the attempted service of a civil action in a lower Court when the same parties were already before a United States Federal Court case set brought about the killing of a United States citizen on his own property which Petitioners must note Justice Douglas' statement "Our Bill of Rights curbs all three branches of government. It subjects all departments of government to a rule of Law and sets boundries beyond which no official may go, it emphasizes that in this Country man walks with dignity and without fear, that he need not grovel before an all powerful government", and Petitioners pray that in this land we still abide by the Constitutional guarantees of due process and equal protection of the Law that Petitioners have raised herein.

24. Petitioners must show that by the use of void and unlawful documents where the question of obligation of Contracts is concerned as outlined in 18 (USC), Section 152: 16 Am 2d, Constitutional Law, Section 11:

"Although common defense is one of the purposes of the Federal Constitution, it was not formed to merely guard the States against danger from foreign nations, but mainly to secure both union and harmony at home and safety against injustice";
supported by the State of South Dakota's State Constitution. Petitioners reference Van Horne v. Dorrance, OC Pa 2 Ball 304, 1 L.Ed. 391, F. Cas. No. 16,857:

"The Constitution of a state is stable and permanent, not to be worked upon to temper the times, not to rise and fall with the tide of events. Notwithstanding the competition of opposing interests, and the violence of contending parties, it remains firm and immovable, as a mountain amidst the strife and storms, or a rock in the ocean amidst the raging of the waves."

Houston County v. Martin, 232 A 1 511, 169 So 13;-

"Constitutions are not primarily designed to protect majorities, who are usually able to protect themselves, but rather to preserve and protect the rights of individuals and minorities against arbitrary actions of those in authority",

it must be the ability of all under Law to abide by the Law without creations of classes or caste systems wherein the Law is separated to be used partly upon such distaste which has been the intent by the

lower Courts to censor Petitioners from being heard.

25. Petitioners show that denial to protect person and property is found Monongahela Navigation Co. v. United States, 148 U.S. 312, 324 (1892):

"Justice Brewer thought the Fourteenth Amendment was intended to protect, 'those rights of person and property which by the Declaration of Independence were affirmed to be inalienable rights'."

Justice Wright and Justice Beck, 27 1A, 46 FF:
"There is, as it were, back of the written Constitutions, an unwritten Constitution if I may use the expression, which guarantees and well protects all the absolute rights of the people";

Re Dorsey, 7 Porter (Ala) 293-377-378 (1883):
"Justice Ormond, claimed that by this language (9th Amendment) the Courts were authorized to declare void any act which was repugnant to natural justice and equity. Hence ' any act of the Legislature which violates any of these asserted rights of which entrenches on any of these great principles of civil liberty, or inherent rights of man shall be void";

State v. Rose, 33 Del, 168, 132, A 864, 45 Ala 85:

Due process of Law as a guarantee of Trial by Jury in the Judicial branch of government... "The words 'Law of the Land' or 'Due process of Law' when used in considering the property rights of individuals, means summons or notice, such as is ordinarily given upon the institution of a suit, due appearance of the parties in interest, pleading facts in issue, and a determination thereof by a Jury";

North Carolina, v. Foy, 2 Hay 310, 312, 5 N.Car. 57, 63 (1804):
"It seems to us to warrant a belief that members of a corporation as well as individuals shall not be so deprived of their Liberties or Properties, unless by a Trial by Jury in a Court of Justice, according to the known and established rules of decision derived from the common law and such acts of the legislature as are consistent with the Constitution";

where the Petitioners herein have been declared to submit to unlawful acts without the benefit of due process and equal protection of the Laws.

26. Petitioners having voiced awareness of a civil rights violation under Title 42 (USC), Chapter 21, the right to represent as

Pro Se as guaranteed Foretta v. California, June 30, 1975. LW 43: "Guarantee right to defend oneself, Pro Se under the Sixth Amendment"; in order to secure the rights of people as found Boynton v. State, 64 So. 2d 536, 554, (1953):

"It was important to establish orderly government and the rights of the people by written Constitution. It is just as important to preserve these rights as it was to create them, if our form of government is to be maintained";

hereby securing Petitioners Constitutional rights as found in Smith v. U.S., 502 F2d 512, (C.A. Tex 1974);

"Government may not prohibit or control the conduct of a person for reasons that infringe upon Constitutionally guaranteed freedoms";

leaving in the instant case Petitioners in derelection of their guaranteed Constitutional rights and freedoms.

WHEREFORE, Petitioners respectfully request the Most Honorable Court for an Order remanding back to the original Court giving Petitioners rights to Amend the Complaint and for Trial on the grounds stated herein.

Dated this 4th day of January, 1985

Iven L. Felt

Iven L. Felt, Petitioner Pro Se
Rt. 2, Box 787
Hettinger, North Dakota 58639

Wilma Felt

Wilma Felt, Petitioner Pro Se
Rt. 2, Box 787
Hettinger, North Dakota 58639

BEST AVAILABLE COPY

NOTICE OF SERVICE

We, the Petitioners, hereby certify that we have had served two true and correct copies of the "Petition for Writ of Certiorari" by the United States Marshal or mailed two true and correct copies of the above "Petition for Writ of Certiorari" this 4 day of Jan, 1985 postage prepaid, certified with return receipt requested to:

Newell E. Krause
Krause & Seiler
P.O. Drawer 490
Mobridge, S.D. 57601

Gene N. Lebrun
Lynn, Jackson, Shultz & Lebrun, P.C.
P.O. Box 8110
Rapid City, S.D. 57701

Dated this 4 day of Jan., 1985.

Iven L. Felt, Petitioner Pro Se
Rt. 2, Box 787
Hettinger, North Dakota 58639

Wilma Felt, Petitioner Pro Se
Rt. 2, Box 787
Hettinger, North Dakota 58639

NOTARY PUBLIC
MARILYN CALDWELL
STATE OF COLORADO

STATE OF COLORADO)
) SS.
COUNTY OF ADAMS)

Subscribed and affirmed to before me this 4 day of Jan, 1985.

My Commission expires: March 13, 1988

Witness my hand and official seal: Marilyn Caldwell
NOTARY PUBLIC
145 S. Park Ave.
Thornton, Colo 80621

Appendix

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

IVEN L. FELT and WILMA FELT, Plaintiffs, vs. FIRST BANK OF SOUTH DAKOTA, (NATIONAL ASSOCIATION), Defendant.	CIV. 83-5166 ORDER FILED February 2, 1984 William F. Clayton, Clerk krb

Defendant having filed a Motion to Dismiss with this Court on January 25, 1984 upon the grounds that Plaintiffs' Complaint failed to state a claim upon which relief may be granted, and this Court having examined all the records and files in this action, and it appearing that Defendant's motion should be granted for the reason that Plaintiffs' Complaint does not state a claim upon which relief may be granted, it is hereby

ORDERED that Defendant's Motion to Dismiss is hereby granted and Plaintiffs' Complaint is hereby dismissed.

Dated this 2nd day of February, 1984.

BY THE COURT:

ANDREW W. BOGUE
CHIEF JUDGE

ATTEST:

WILLIAM F. CLAYTON,
Clerk
By KAREN R. BEHRENS
Deputy

NOTICE OF ENTRY
Take notice that the original of this copy was filed and entered in the office of the Clerk of the United States District Court for the District of South Dakota on the 2nd day of Feb., 1984.
WILLIAM F. CLAYTON, Clerk
krb

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

IVEN L. FELT and WILMA FELT, Plaintiffs, vs. FIRST BANK OF SOUTH DAKOTA, (NATIONAL ASSOCIATION), Defendant.	)	CIV. 83-5166 ORDER FILED February 21, 1984 William F. Clayton, CLERK kac

Pro se Plaintiffs have moved this Court for its order vacating the order dismissing this matter. Alternatively, Plaintiffs move for leave to refile their complaint as amended. Plaintiffs support their motions with a memorandum. This Court has reviewed Plaintiffs' material and the record as a whole. No good cause appearing, it is hereby

ORDERED that Plaintiffs' alternative motions are denied.

Dated this 20th day of February, 1984.

BY THE COURT:

ANDREW W. BOGUE
CHIEF JUDGE

ATTEST:

WILLIAM F. CLAYTON,
Clerk
By KATHLEEN A. CHARRON
Deputy

NOTICE OF ENTRY
Take notice that the original of this copy was filed and entered in the office of the Clerk of the United States District Court for the District of South Dakota on the 21st day of February, 1984.
WILLIAM F. CLAYTON, Clerk
ka

IN THE DISTRICT COURT
FOR THE STATE OF SOUTH DAKOTA

RAPID CITY, SOUTH DAKOTA
WESTERN DIVISION

IVEN L. FELT and WILMA FELT, Plaintiffs, Pro se	)	
vs.	)	
FIRST BANK OF SOUTH DAKOTA, (NATIONAL ASSOCIATION),	)	
Defendants.	)	Case No. 83-5166

NOTICE OF APPEAL

Notice is hereby given that Iven L. Felt and Wilma Felt, Plaintiffs above named, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the Order of Dismissal of Plaintiff's Complaint entered in this action on the 2nd day of February, 1984.

Dated this 1st day of March, 1984.

IVEN L. FELT
Iven L. Felt, Defendant,
Pro se
Rt. 2 Box 23
Hettinger, North Dakota
58639

WILMA FELT
Wilma Felt, Defendant,
Pro se
Rt. 2 Box 23
Hettinger, North Dakota
58639

STATE OF S. DAK)
) SS.
COUNTY OF PEN-
NINGTON)

Subscribed and sworn to before me this 1 day of March, 1984.
My Commission expires: Feb. 27, 1987. Witness my hand and official seal:

Coleen Peck
Notary Public

CERTIFICATE OF MAILING

We hereby certify that we mailed a copy of the above "Notice of Appeal" this 1st day of March, 1984, postage prepaid, certified with return receipt requested to:

Newell E. Krause
Krause & Seiler
P.O. Box 397
Mobridge, S.D. 57601

Gene N. Lebrun
Lynn, Jacksonn, Shultz
&Lebrun, P.C.
P.O. Box 8110
Rapid City, SD 57701

Dated this 1st day of March, 1984.

IVAN L. FELT
Iven L. Felt, Plaintiff,
Pro se
Rt. 2 Box 23
Hettinger, North Dakota
58639

WILMA FELT
Wilma Felt, Plaintiff,
Pro se
Rt. 2 Box 23
Hettinger, North Dakota
58639

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Judgment

FILED
JUL 18 1984
Robert D. St. Vrain

No. 84-1293 September Term, 1983

IVEN L. FELT, et al, *
Appellants. *
vs. *
FIRST BANK OF SOUTH DAKOTA, *
Appellee. *

Appeal from the United States District Court for the District of South Dakota

FILED
Aug. 17, 1984
William F. Clayton,
bh Clerk

This appeal from the United States District Court was submitted on the record of the said District Court and the briefs of the parties.

After consideration, it is ordered and adjudged that the judgment of the said district court is hereby affirmed in accordance with the opinion of this Court.

July 18, 1984

Costs of appellee for briefs
for recovery from appellants: $45.00

A True Copy:

Attest: ROBERT D. ST. VRAIN
Clerk, U.S. Court of Appeals,
Eighth Circuit
8/14/84

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 84-1293

IVEN L. FELT and WILMA FELT,

Appellants,

v.

FIRST BANK OF SOUTH DAKOTA,

Appellee.

Appeal from the United States District Court for the District of South Dakota

Submitted: June 19, 1984

Filed: July 18, 1984

Before ROSS, McMILLIAN and FAGG, Circuit Judges.

PER CURIAM.

Iven L. Felt and Wilma Felt appeal from a final judgment entered in the District Court[1] for the District of South Dakota dismissing their complaint for failure to state a claim upon which relief can be granted. For reversal appellants argue the district court improperly granted the motion to dismiss. For the reasons discussed below, we affirm.

Appellants, North Dakota farmers, signed notes for more than $134,000 and granted to the First Bank of South Dakota security interests in livestock, feed and farm equipment to secure payment. When appellants failed to make timely payments, the bank commenced foreclosure proceedings in the state court. In their pro se complaint filed in federal district court, appellants alleged that the security agreements were signed by only Iven L. Felt, were unnotarized, contained no rights of recission, and no disclosure statements in violation of 15

[1]The Honorable Andrew W. Bogue, Chief Judge, United States District Court for the District of South Dakota.

U.S.C. §§ 1601, 1604, 1605, 1635, 1640, and 1691(d). They filed a motion to compel rescission of the security agreements under 15 U.S.C. § 1635.

Defendants in their answer alleged as affirmative defenses that the complaint failed to state a claim upon which relief could be granted and the claim was barred by the applicable statute of limitations and the doctrine of res judicata. The district court dismissed the complaint for failure to state a claim. This appeal followed.

We affirm. The allegations of the complaint center on noncompliance with 15 U.S.C. § 1635, which provides a right of rescission as to consumer credit transactions in which a security interest is acquired or retained in real property used as the residence of the person to whom credit is extended. The security interests involved in this case were in livestock, feed and equipment, not real estate. Therefore, 15 U.S.C. § 1635 is inapplicable, and the district court properly dismissed the complaint for failure to state a claim.

Accordingly, the judgment of the district court is affirmed.

A true copy.

ATTEST:
CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

[Not to be published.]

Office-Supreme Court, U.S.
FILED
JUL 18 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1918

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

IVEN L. FELT and WILMA FELT,
Petitioners,

v.

FIRST BANK OF SOUTH DAKOTA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF FOR FIRST BANK OF SOUTH DAKOTA IN OPPOSITION

HORACE R. JACKSON
GENE N. LEBRUN
LYNN, JACKSON, SHULTZ & LEBRUN, P.C.
P. O. Box 8110
Rapid City, SD 57709
(605) 342-2592

Counsel for Respondent
First Bank of South Dakota

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

BEST AVAILABLE COPY

QUESTION PRESENTED

Did the District Court err in dismissing Felts' Complaint for failure to state a claim upon which relief can be granted. F.R.C.P. 12.

As appears from the record no question of amendment or denial thereof ever arose.

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	iii
Statement	1
Opinion Below	2
Statement	3
Argument	5
Conclusion	7
Certificate of Service	8
Appendix Table of Contents	(i)
Appendix	1a

TABLE OF AUTHORITIES

	Page
15 U.S.C. 1601	5, 6
15 U.S.C. 1635	6
15 U.S.C. 1640(e)	1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-1918

IVEN L. FELT and WILMA FELT,
Petitioners,

v.

FIRST BANK OF SOUTH DAKOTA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF FOR FIRST BANK OF SOUTH DAKOTA IN OPPOSITION

STATEMENT

I

Preliminarily the Court should be advised Petitioners' Complaint (NR 2, App. 10a) below fails to invoke jurisdiction in the Federal Courts, 15 U.S.C. 1640(e) requiring the action to be commenced within one year of the occurrence of the violation. The action

was filed in the District Court December 12, 1983 (NR 1, App. 6a). The Complaint identified as the subject of the action certain Exhibits which were attached to the Complaint. All of the Exhibits were dated more than one year prior to the commencement of the action. The Answer (NR 6, App. 6a) at Paragraph III asserted the Plaintiffs' claim was barred by the statute. That bar has not yet been presented because of the prior disposition of the action for failure to state a claim upon which relief could be granted.

II

Our research has found no cases which we believe would come within the considerations stated in Supreme Court Rule 17, nor do the cases cited by Petitioners appear to invoke such consideration.

OPINION BELOW

The opinion of the Court of Appeals denominated as here, No. 84-1293, was filed July 18, 1984, marked [not to be published]. A copy is attached (App. 1a). The Order and Judgment of the District Court (Case Number CIV. 83-5166), affirmed by the Court of Appeals, dismissing Plaintiffs' (Petitioners here) Complaint for failure to state a claim upon which relief could be granted was docketed February 2, 1984 (not published). A copy is attached (App. 3a).

The appeal briefing schedule of the Court of Appeals advised the Court would consider the appeal on the original file of the District Court in lieu of a designated record.

Accordingly, references in this Brief will be to the appropriate docket file number of the District Court record (United States District Court, District of South Dakota, Western Division. CIV. 83-5166. Iven L. Felt and Wilma Felt, Plaintiffs, vs. First Bank of South Dakota). A copy of the docket is attached. (App. 6a).

STATEMENT

Plaintiffs, Iven L. and Wilma Felt, are husband and wife, farmer-ranchers in Perkins County, South Dakota. In their operation they procured continuing financing from Defendant First Bank of South Dakota, by a long series of transactions commencing at least as far back as 1977, giving notes for the indebtedness and guarantees and security agreements securing the payment. The debts were not paid and First Bank commenced foreclosure action in the state court.

Felts then commenced this action in Federal District Court December 12, 1983, by filing a Complaint (NR 2, App. 10a). Service was made and Answer served and filed (NR 7, 6, App. 6a). A copy of the Complaint is attached (App. 10a).

The Complaint identified as the subject of the action, Exhibits A, App. 19a; B, App. 23a, B1, App. 25a, B2, App. 27a; C, App. 28a, C1, App. 34a, C2, App. 35a, C3, App. 36a, C4, App. 37a, C5, App. 42a; D, App. 48a, all of which were attached to the Complaint.

A and B2 is a Security Agreement covering farm machinery, equipment and livestock dated November 24, 1980.

B and B1 consists of a Security Agreement dated December 6, 1979, covering a pickup truck.

C is a promissory note, Felts to First Bank (the First National Bank in Lemmon, now First Bank) secured by farm machinery, livestock and feed, dated July 13, 1979.

C2 dated May 4, 1981 and C3 is a promissory note and payment schedule, Felts to First Bank, secured by cattle, feed and farm machinery.

C4 dated May 16, 1981 and C5 dated June 8, 1981 are two promissory notes and payment schedules, Felts to First Bank, secured by cattle, feed and farm machinery.

D is a copy of Summons in a civil action in state court by First Bank against Felts.

The Complaint (NR 2, App. 10a) alleges the Exhibits identified demonstrate violation of certain sections of U.S.C. Title 15. It further alleges that efforts to collect on the void unpaid notes by subjecting the security to foreclosure result in unspecified violations of Title 42, Ch. 21 (Civil Rights); Title 12, Section 2605, and the Fourth and Fourteenth Amendments to the Constitution of the United States. The Complaint further demands punitive damages, attorney fees and costs.

So far as material to disposition of the present appeal, the Answer (NR 6, App. 6a) asserted the Complaint fails to state a claim upon which relief can be granted.

January 24, 1984, First Bank, conforming to Local Rule 4, served (and filed January 25, 1984) its Response to Motion of Plaintiffs filed January 6, 1984, requesting, on the basis of the Response, that Felt's

Motion be dismissed on the merits, and further, on the basis of the Response, requesting its Motion contained in its Answer be renewed and considered and be granted on the demonstrated basis the Complaint failed to state a claim on which relief could be granted (NR 18, App. 6a).

After consideration, the District Court granted First Bank's motions and denied Felt's Motion of January 6, 1984, and dismissed the Complaint for failure to state a claim upon which relief could be granted (NR 20, App. 6a).

Felts moved to vacate the Order of Dismissal (NR 21, App. 6a) and filed Memorandum in Support thereof (NR 22, App. 6a). The Motion to Vacate was denied (NR 23, App. 6a). Felts then served and filed Notice of Appeal to the Court of Appeals (NR 24, App. 6a).

ARGUMENT

(A) 15 U.S.C. 1601 et seq. Not Applicable

From a reading of the Complaint and the Exhibits attached to the Complaint (NR 2, App. 10a), Felts' Motion of December 12, 1983 (NR 4, App. 6a) and Felts' Motion of January 6, 1984 (NR 8, App. 6a). and Felts' Points (NR 9, App. 6a). it incontrovertibly appears Felts borrowed money from Defendant and gave Promissory Notes with Guarantee and Security Agreements as security for the loans and subsequent advancements; that this money was for the purpose of financing Felts' agricultural enterprise; that all the security was agricultural in nature (feed, cattle, livestock, agricultural machinery); that Felts base their

claims to rescind the series of transactions and recover damages, actual and punitive, attorney fees and costs, on 15 U.S.C. 1601 and 1635.

Neither Section 1601 or 1635 provide a basis for the complaints made by Felts in their various pleadings or motions.

Felts' identify, as the credit instruments upon which this action is founded, Exhibits "A" (App. 19a) through "C-5" (App. 32a), attached to the Complaint. None of these instruments contain or refer to any security interest in real property of any kind, let alone any real property identified as that which Felts' use or expect to use as a residence.

If the main action then fails, as it does, there does not arise any duty of disclosure recited in the statute or duty of giving notice of right of rescission, any right of cancellation of finance charges, interest charges, or security interest, any right to penalties or attorney fees and costs.

No additional facts are stated in the Complaint which would afford Felts any other or alternative relief.

CONCLUSION

The Motions were properly denied and the Complaint was properly dismissed.

Respectfully submitted this 1st day of July, 1984.

HORACE R. JACKSON
GENE N. LEBRUN
LYNN, JACKSON, SHULTZ & LEBRUN, P.C.
P. O. Box 8110
Rapid City, SD 57709
(605) 342-2592

Counsel for Respondent
First Bank of South Dakota

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of July, 1985, I sent to:

Iven L. Felt
Wilma Felt
Rt. 2, Box 787
Hettinger, ND 58639

by first class mail, postage prepaid, two true and correct copies of Brief for First Bank of South Dakota in Opposition relative to the above-entitled matter.

/s/ HORACE R. JACKSON
Horace R. Jackson

APPENDIX

APPENDIX TABLE OF CONTENTS

Opinion of Eighth Circuit Court of Appeals 1a

Order of District Court 3a

Docket Cover Sheet 5a

Docket Listing File Numbers 6a

Complaint with Exhibits 10a

Exhibit A 19a

Exhibit B 23a

Exhibit C 28a

Exhibit D 48a

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 84-1293

IVEN L. FELT AND WILMA FELT,
Appellants,

v.

FIRST BANK OF SOUTH DAKOTA,
Appellee.

Appeal from the United States District Court
for the District of South Dakota

Submitted: June 19, 1984
Filed: July 18, 1984

OPINION

Before Ross, MCMILLIAN and FAGG, Circuit Judges.

PER CURIAM.

Iven L. Felt and Wilma Felt appeal from a final judgment entered in the District Court[1] for the District of South Dakota dismissing their complaint for failure to state a claim upon which relief can be granted. For reversal appellants argue the district court improperly granted the motion to dismiss. For the reasons discussed below, we affirm.

Appellants, North Dakota farmers, signed notes for more than $134,000 and granted to the First Bank of South Dakota security interests in livestock, feed and farm equipment to secure payment. When appellants

---

[1] The Honorable Andrew W. Bogue, Chief Judge, United States District Court for the District of South Dakota.

failed to make timely payments, the bank commenced foreclosure proceedings in the state court. In their pro se complaint filed in federal district court, appellants alleged that the security agreements were signed by only Iven L. Felt, were unnotarized, contained no rights of rescission, and no disclosure statements in violation of 15 U.S.C. § 1601, 1604, 1605, 1635, 1640, and 1691(d). They filed a motion to compel rescission of the security agreements under 15 U.S.C. § 1635.

Defendants in their answer alleged as affirmative defenses that the complaint failed to state a claim upon which relief could be granted and the claim was barred by the applicable statute of limitations and the doctrine of res judicata. The district court dismissed the complaint for failure to state a claim. This appeal followed.

We affirm. The allegations of the complaint center on noncompliance with 15 U.S.C. § 1635, which provides a right of rescission as to consumer credit transactions in which a security interest is acquired or retained in real property used as the residence of the person to whom credit is extended. The security interests involved in this case were in livestock, feed and equipment, not real estate. Therefore, 15 U.S.C. § 1635 is inapplicable, and the district court properly dismissed the complaint for failure to state a claim.

Accordingly, the judgment of the district court is affirmed.

A true copy.

ATTEST:

Clerk, U.S. Court of Appeals, Eighth Circuit.

[Not to be published.]

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

Civ. 83-5166

IVEN L. FELT AND WILMA FELT,
Plaintiffs,

vs.

FIRST BANK OF SOUTH DAKOTA,
(NATIONAL ASSOCIATION)
Defendant.

ORDER

Filed February 2, 1984
William F. Clayton, Clerk
krb

Defendant having filed a Motion to Dismiss with this Court on January 25, 1984 upon the grounds that Plaintiffs' Complaint failed to state a claim upon which relief may be granted, and this Court having examined all the records and files in this action, and it appearing that Defendant's motion should be granted for the reason that Plaintiffs' Complaint does not state a claim upon which relief may be granted, it is hereby

ORDERED that Defendant's Motion to Dismiss is hereby granted and Plaintiffs' Complaint is hereby dismissed.

Dated this 2nd day of February, 1984.

BY THE COURT:
ANDREW W. BOGUE
Chief Judge

ATTEST:

WILLIAM F. CLAYTON, Clerk

By KAREN R. BEHRENS, Deputy

Take notice that the original of the copy was filed and entered in the office of the Clerk of the United States District Court for the District of South Dakota on the 2nd day of February, 1984.

/s/ WILLIAM F. CLAYTON
Clerk

DOCKET COVER SHEET

Dist.: 869 Off.: 5 Docket: Yr. 83 Number 5166

Filing Date: Mo 12 Day 12 Year 3 J: 3 N/S: 371

O: 1 $ Demand: Nearest $1,000 999

Judge/Mag. No.: J 6905 County: 46105

Docket: Yr. 83 Number 5166

PLAINTIFFS

FELT, Ivan L.; and FELT, Wilma

DEFENDANTS

FIRST Bank of South Dakota (National Association)

CAUSE

(Cite the U.S. Civil Statute under which the case is filed and write a brief statement of cause)

Chapter 15. This is an equity suit on violating of Federal statutes.

ATTORNEYS

Ivan L. & Wilma Felt, Pro Se.
Rt. 2, Box 23
Hettinger, ND 58639
605-855-2340

Gene Lebrun
P. O. Box 8110
Rapid City, SD 57701
605-342-2592

FILING FEES PAID

Receipt Number: 12

DOCKET LISTING FILE NUMBERS

PROCEEDINGS

CIV83-5166

Ivan & Wilma Felt vs. First Bank of South Dakota, etc.

Date	*NR.*	
1983		
Dec. 12	1	CIVIL Cover Sheet w/Demand for Jury Trial
Dec. 12	2	COMPLAINT w/o Demand for Jury Trial
Dec. 12		Issuing SUMMONS fur. 2 conformed copies to Ivan Felt for service
Dec. 12	3	NOTICE of Receision Against the Liens & Mortgages Subject of the Instant Law Suit
Dec. 12	4	MOTION of Plff. to Compel Recision of all Liens and Mortgages Subject of the Instant Law Suit
Dec. 15	5	ORDER Denying Plffs. Motions to Recind all Liens & Mortgages & for Summary Judgment
Dec. 15		Notice of entry & copy of Order mailed Ivan & Wilma Felt
Dec. 15		Correct copy entered 1983 WDOB page 221
Dec. 22	6	ANSWER
Dec. 27	7	SUMMONS Ret. & Filed

1984

Jan. 6	8	PLFFS. MOTION TO COMPEL Recision of All Liens and Mortgages Subject Of the Instant Law Suit
Jan. 6	9	POINTS IN SUPPORT Of Plffs. Motion To Compel
Jan. 6	10	PLFFS. RESPONSE To Dfdts. Motion To Dismiss
Jan. 12	11	ORDER that Dfdt. respond to Plffs' motion by 1-30-84, denying Dfdt's. motion to dismiss w/out prejudice, denying Plffs'. motion to strike
Jan. 12		Notice of Entry & copy of Order mailed Ivan & Wilma Felt & Gene Lebrun
Jan. 24	12	MOTION of Plffs to Remove w/ORDER attached UNSIGNED
Jan. 24	13	AFFIDAVIT of Amount Owing
Jan. 24	14	PRAECIPE Requesting Clerk to Enter Clerk's Entry of Default
Jan. 24	15	AFFIDAVIT of Service
Jan. 25	16	DEFAULT Judgment *UNSIGNED*
Jan. 25	17	ORDER that Default Judgment Shall not be Entered; Denying Plff. Motion to Remove
Jan. 25		Notice of entry & copy of Order mailed Gene Lebrun, Ivan & Wilma Felt

Jan. 25	18	RESPONSE to Plffs. Motion of January 6, 1984
Feb. 2	19	RULE 16(b) Scheduling Request
Feb. 2		Mailing Copies to Ivan & Wilma Felt and Gene Lebrun
Feb. 2	20	ORDER granting Dfdt.'s Motion To Dismiss and dismissing Plffs.' Complaint
Feb. 2		Notice of Entry and copy mailed Ivan & Wilma Felt and Gene Lebrun
Feb. 13	21	MOTION TO VACATE ORDER Or In The Alternative Leave to Refile Compl. as Amended by Plffs.
Feb. 13	22	MEMORANDUM In Support of Plffs' Motion To Vacate Order of Dismissal or In The Alternative Leave To Refile Complaint as Amended
Feb. 21	23	ORDER denying Plffs'. alternative motions
Feb. 21		Notice of Entry & copy of Order mailed Gene Lebrun, Ivan & Wilma Felt
Mar. 1	24	NOTICE OF APPEAL
Mar. 1		C. copy of Notice of Appeal mailed to Ivan & Wilma Felt and Gene Lebrun

Mar. 1	Mailing Record on Appeal to Robert D. St. Vrain, Clerk, U.S. Court of Appeals for the Eighth Circuit, St. Louis, MO, 63101
Mar. 1	Mailing copy of Record on Appeal to Robert D. St. Vrain, Clerk, U.S. Court of Appeals for the Eighth Circuit, St. Louis, MO 63101

COMPLAINT WITH EXHIBITS

IN THE DISTRICT COURT FOR THE
STATE OF SOUTH DAKOTA
RAPID CITY, SOUTH DAKOTA

Case No.

IVEN L. FELT AND WILMA FELT,
Plaintiffs, Pro Se

VS.

FIRST BANK OF SOUTH DAKOTA
(NATIONAL ASSOCIATION)
Defendants.

COMPLAINT

JURISDICTION: 4th Amendment of United States Constitution
14th Amendment of United States Constitution
Chapter 15 (USC), Sect. 1601, 1602(s), 1602(t), 1607, 1635, 1637, 1638, 1639, 1640
Title 28 (USC), Sect. 1331
Title 42 (USC) Chapter 21;
Title 18 (USC) Sect. 152;
Bill of Rights, State of South Dakota Constitution

COMES NOW the Plaintiffs complaining and alleging as follows:

1. Plaintiffs notices the Court Exhibit "A" attached hereto some kind of a Secutity Agreement Dated 24th day of November 1980 that contains no

signature of spouse, unnotarized, no rights of recision, no disclosure statements which is a violation of Title 15 (USC) Sect. 1601, 1604, 1605, 1635, 1640, 1691(d), which makes said instrument void and illegal.

2. Plaintiffs notices the Court that Exhibit "A" has no corresponding note dated the same date which proves that this particular instrument could never have been part of a Truth in Lending transaction and makes any other assumption on the part of the Defendants herein null and void.

3. Plaintiffs notices the Court to Exhibit "B" thru "B2" some kind of a Security Agreement dated 12-6-79 that contains no signature as checked of Plaintiffs spouse, no signature of the lenders, not notarized, no right of recision, no disclosure statements, no corresponding notes which is a violation of Title 15 (USC) sections 1601, 1604, 1605, 1635, 1640, 1691(d) which makes said instrument void and illegal.

4. Plaintiffs notices the Court to Exhibit "C" thru "C5" what are called notes that are not notarized and on Exhibit "C4" do not contain spouses signature of the Plaintiff, no rights of recision, no disclosure required by Federal Truth in Lending, no corresponding Security Agreements, Deeds or Notes which proves the Defendants herein have violated Title 15 (USC) Federal Truth in Lending Act making all instruments void and unlawful.

5. Plaintiffs notices the Court to Exhibit "D" attached herewith a copy of the cover sheet of an action taken in the South Dakota Circiut Courts where the Exhibits attached hereto were used knowing they violated Federal Truth in Lending which is a violation of Title 18 (USC) Sect. 152 fraudulent papers to

collect a claim is both a criminal penalty of fine or imprisonment which Defendants herein have perpertrated upon the Plaintiffs herein.

6. Plaintiffs notices the Court the use of Judicial Courts a fraudulent attempt violates Title 15 (USC) Sections 1692 e, 1692 f, 1692 g, 1692 h, 1692 j, 1963 l, 1693 n, 1716 wherein Defendants have violated Plaintiffs creating damages of unmeasurable structure.

7. Plaintiffs notices the Court to Title 15 (USC) Section 1607 wherein Defendant Bank must comply with Federal Truth in Lending and to Title 15 (USC) Section 1719 where Jurisdiction of this Court carries.

8. Plaintiffs notices the Court to Title 42 (USC) Chapter 21, Civil Rights Act, that an attempt to incriminate causing Plaintiffs to be threatened of Life, Liberty or Property is a violation of Plaintiffs Civil Rights, perperates a fraud and has been condoned by the Defendants herein.

9. Plaintiffs notices the Court to Due Process and Equal Protection of the laws in which Defendants herein have ignored in an attempt to seize property through unlawful techniques, while using Judicial system in contempt and has violated the Fourth and Fourteenth Amendments of the United States Constitution, Bill of Rights, South Dakota State Constitution.

10. Plaintiffs notices the Court of Title 12 (USC) Section 2605 Real Estate Settlement Procedures Act which is a part of Section 1631, sub Section (c) which has been violated by the Defendants herein making entire transactions null and void between the parties herein.

WHEREFORE, Plaintiffs pray for Summary Judgment for actual damages the sum of $5,000,000.00 (Five Million and no/100) dollars.

COUNT 2

1. COMES NOW the Plaintiffs, suffering extreme mental cruelty and duress through no fault of their own, but by the actions of the wanton harassment of an ill mannered and unmoral Defendants and has had to undergo such to such an extent that was uncalled for but delivered as a fallacious punishment by intent with a heartless uneducated callousness that harbors barbarious Pontiu Pilate punishment beyond societies legal or moral intentions, no matter what might be considered as acceptable.

2. Plaintiffs have had to partake and accept humiliation beyond their wildest imagination through no fault of their own, which is like a "flea on a gnat's behind," which, when attempting to explain is one thing but to attempt to find is something else and carries to its bed a directness of shivering intent unexplainable and never payable in a monetary value, since the itching brought about can only be told by the actions of a dog and cat, but Plaintiffs are Human Beings.

3. Plaintiffs have been forced to extreme mental and physical duress by the constant uncalled for pressures of unauthorized conduct on the part of the Defendants, causing health problems of extreme stress and strain, not through the fault of the Defendants, but rather through the applied coersive intent of tumultuous barriers that have been unnecessarily placed as a burden on the back of America's most

dynamic, historically moral, courageous and thrifty part of society, herein Plaintiffs, chronicle and blazant members of the greatest industry in this nation, American Agriculture.

4. Plaintiffss' tears and inflicted pain caused by the nefarious conduct of a Defendants long unchained of default in conduct has required the courage to stand affront Satan's breath of Hell, not by Plaintiffs' choosing, but rather by Defendants hellish antics of uncurbed conduct, which has run far too long rampant in its area and long ago should have been chained as the "Mad Dog, Pluto" in the comic strips.

WHEREFORE, Plaintiffs prays for Summary Judgement for Punitive Damages for the extremity of the inhuman suffering heretofore described in the amount of $5,000,000.00 (Five Million dollars) against Defendants and their heirs.

COUNT 3

Plaintiffs have shown sufficient severity of damages brought about by the Defendants herein named to reasonably ask for Summary Judgment for Attorney's Fees, Court Costs and any and all other legal fees this litigation might incur, payable forthwith on final stipulations, agreements, or settlements which may be reached herein.

Dated this 10th day of December, 1983.

/s/ IVEN L. FELT
Iven L. Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

/s/ WILMA FELT
Wilma Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

STATE OF COLORADO
COUNTY OF WELD ss.

Subscribed and sworn to before me this 10 day of Dec., 1983.

My Commission expires June 3, 1986

Witness my hand and official seal:

[SEAL]

/s/ JOYCE A. UNGRY
Notary Public

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the above "Complaint and Pro Se" this 12th day of December, 1983, postage prepaid, The Atorney General of the United States, Tenth and Constitution Ave., Washington, DC 20530 and The U. S. District Attorney for the State of Dakota, Philip N. Hogen, 135 Federal Building and United States Courthouse, 400 South Phillips Ave., P O Box 1073, Sioux Falls, South Dakota 57102.

/s/ IVEN L. FELT
Iven L. Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

/s/ WILMA FELT
Wilma Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

NOTICE OF SERVICE

We, Iven L. Felt and Wilma Felt, hereby certify that we have had served a true and correct copy of the "Complaint" with "Summons" and "Pro Se" by Sheriff Kolb to: First Bank of South Dakota (National Association), Lemmon, South Dakota 57638.

Dated this 12 day of December, 1983.

/s/ IVEN L. FELT
Iven L. Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

/s/ WILMA FELT
Wilma Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

IN THE DISTRICT COURT FOR THE
STATE OF SOUTH DAKOTA
RAPID CITY, SOUTH DAKOTA

Case No.

—

IVEN L. FELT AND WILMA FELT
Plaintiffs, Pro Se

VS.

FIRST BANK OF SOUTH DAKOTA
(NATIONAL ASSOCIATION)
Defendants.

NOTICE OF PRO SE

COMES NOW, Iven L. Felt and Wilma Felt, Notices the Honorable Court of Pro Se in the above numbered case.

Dated this 10th day of December, 1983

/s/ IVEN L. FELT
Iven L. Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

/s/ WILMA FELT
Wilma Felt, Plaintiff Pro Se
Rt. 2 Box 23
Hettinger, North Dakota 58639

STATE OF COLORADO
COUNTY OF WELD ss.

Subscribed and sworn to before me this 10 day of Dec., 1983.

My Commission expires June 3, 1986

Witness my hand and official seal:

[SEAL] /s/ JOYCE A. UNGRY
Notary Public

Exhibit "A"

SECURITY AGREEMENT

Farm Products and Equipment

The undersigned (hereinafter called "Borrower") hereby grants to First National Bank in Lemmon, Lemmon, South Dakota (hereinafter called "Bank") a Security Interest in the following described property (hereinafter called "Collateral"):

(a) [Describe equipment]

All farm machinery and equipment, including but not limited to that listed on Schedule "A" attached hereto.

together with all tools, parts, accessories, repairs, improvements and accessions thereto and substitutions and replacements therefor now existing or at any time hereafter made or acquired and all other Equipment (as that term is defined in the Uniform Commercial Code) now owned or hereafter at any time acquired by Borrower or in which Borrower obtains rights;

(b) [Describe livestock, poultry, etc.]

All cattle, sheep and swine, incluidng but not limited to the following:

98 Cows & Heifers
2 Bulls
70 Calves

together with the young and produce thereof and all other livestock and poultry now owned or hereafter at any time acquired by Borrower or in

which Borrower obtains rights; all of which are or will be located at NW¼, 11-21-10, Perkins County, SD

on premises owned by: borrower

together with all other crops grown or growing or planted within one (1) year from the date hereof on the premises described as follows:

which premises are owned by:

(d) All feed, seed, fertilizer and other supplies now owned or hereafter at any time acquired by Borrower for use in connection with its farming operations;

(e) All property of every kind and description in which the Borrower has or may acquire any interest now or hereafter at any time in the possession or control of the Bank for any reason including, without limitation, property delivered to the Bank as collateral, for safekeeping, or for collection or exchange for other property, and all dividends and distributions on or other rights in connection with such property; and

(f) All Proceeds and Products of all the foregoing,

to secure payment to the Bank at its banking house at the address stated above of all notes of Borrower concurrently herewith, heretofore or hereafter delivered to or purchased or otherwise acquired by the Bank, and all other liabilities and indebtedness of Borrower to Bank, due or to become due, direct or indirect, absolute or contingent, joint or several, howsoever created, arising or evidenced, now existing or

hereafter at any time created, arising or incurred (hereinafter called "Secured Obligations").

Borrower warrants, represents and agrees that:

1. The Collateral is or will be used, produced or consumed primarily in connection with Borrower's farming operations.

2. The Collateral ☐ will ☐ will not be acquired with the proceeds of the loan or advance made on or about the date hereof. If the Collateral will be so acquired, the Bank is authorized to disburse such proceeds directly to the seller or sellers of the Collateral.

3. The Collateral is or will be located at the location or locations herein set forth and will not be removed from such location or locations unless, prior to any such removal, Borrower has given written notice to the Bank of the location or locations to which Borrower desires to remove the Collateral and the Bank has given its written consent to such removal.

4. Borrower has or will acquire title to and will at all times keep the Collateral free of all liens and encumbrances, except the Security Interest created hereby, and has full power and authority to execute this Security Agreement, to perform Borrower's obligations hereunder, and to subject the Collateral to the Security Interest created hereby. No financing statement covering all or any part of the Collateral, except any which may have been filed by the Bank, is on file in any public office.

5. Borrower will at any time or times hereafter execute such financing statements and other instru-

ments and perform such acts as the Bank may request to establish and maintain a valid Security Interest in the Collateral, and will pay all costs of filing and recording.

6. Borrower will keep the Collateral in good condition and insured against such risks and in such amounts as the Bank may request, and with an insurance company or companies satisfactory to the Bank, the policies to protect the Bank as its interest may appear and to be delivered to the Bank at its request.

7. Upon default by Borrower in any of the preceding agreements, the Bank at its option may (i) effect such insurance and repairs and pay the premiums therefor and the costs thereof, and (ii) pay and discharge any taxes, liens and encumbrances on the Collateral. All sums so advanced or paid by the Bank shall be payable by Borrower on demand with interest at the maximum rate allowed by law and shall be a part of the Secured Obligations.

8. Borrower will not sell, transfer, lease, or otherwise dispose of the Collateral, or attempt or offer to do any of the foregoing, without the prior written consent of the Bank, and unless the Proceeds of any such sale, transfer, lease, or other disposition are paid directly to the Bank. No provision contained in the Agreement shall be construed to authorize any such sale, transfer, lease or other disposition of the Collateral except on the conditions contained in this paragraph.

Exhibit "B"

SECURITY AGREEMENT

Consumer Goods

The undersigned (referred to as "Borrower") grants to First National Bank in Lemmon Lemmon, South Dakota (referred to as "Bank") a security interest in the following property (referred to as "Collateral"):

1—1978 GMC ¾ ton 4 x 4 Pickup,
Serial #TKL248J15233

together with all parts, accessories, repairs, improvements and accessions at any time made or acquired;

to secure payment to the Bank at its banking house at the address stated above of one note of the Borrower for $25,000.00, dated 12-6, 1979, due 6-15-80 after date and all other notes given in renewal of it (referred to as "Secured Obligation").

Borrower warrants and agrees that:

1. The Collateral is or will be used by Borrower primarily for personal, family or household purposes.

2. The Collateral ☐ will ☒ will not be acquired by Borrower with the proceeds of the Secured Obligation. If the Collateral will be so acquired, the Bank is authorized to disburse such proceeds directly to the seller of the Collateral.

3. The Collateral is or will be located at Borrower's address shown below and will not be permanently removed from that address unless Borrower has pre-

viously given written notice to the Bank of the location to which he desires to remove the Collateral and the Bank has given its written consent.

4. Borrower has or will acquire title to and will keep the Collateral free of liens and encumbrances, except this Security Interest and has the power and authority: to execute this Security Agreement; to perform Borrower's obligations hereunder; and to subject the Collateral to this Security Interest. No financing statement or other evidence of lien covering all or any part of the Collateral, except any which may have been filed by the Bank, is on file in any public office.

5. Borrower will at any time execute financing statements and other instruments and perform such acts as the Bank may request to establish its security interest in the Collateral, and will pay all costs of filing and recording.

6. Borrower will keep the Collateral in good condition and insured (in amounts and with coverage as requested by the Bank) with an insurance company or companies satisfactory to the Bank. The insurance policies shall protect and state the Bank's interest, and shall be delivered to the Bank at its request.

7. Upon default by Borrower in any of these provisions, the Bank may (i) effect such insurance and repairs and pay the premiums and related costs and (ii) pay and discharge any taxes, liens and encumbrances on the Collateral. All sums so advanced by the Bank shall be payable by Borrower on demand with interest at the maximum rate allowed by law.

8. Borrower will not sell, lease, or otherwise dispose or attempt to dispose of the Collateral, without the prior written consent of the Bank, and unless the Proceeds of any such sale, lease, or other disposition are paid to the Bank.

9. Any of the following will constitute an event of default: (a) failure of any Borrower, or indorser, to pay when due any amount payable under the Secured Obligation; (b) failure to perform any agreement of Borrower; (c) any statement, or warranty of Borrower made or furnished to the Bank which is untrue in any respect; (d) any change in the affairs of a Borrower or indorser of the Secured Obligation which the Bank believes impairs its security or increases its risk.

10. Whenever a default exists, the Bank may, without demand or notice, declare all or any part of the Secured Obligation immediately payable, and may exercise all rights and remedies of a secured party under the Uniform Commercial Code, any applicable law, or this Security Agreement.

11. Borrower agrees, in the event of default, to make the Collateral available to the Bank at any place acceptable to Bank, and to pay all costs, including reasonable attorneys' fees, in the collection of the Secured Obligation and the enforcement of any of the Bank's rights. If any notification of disposition of any of the Collateral is required by law, such notification is reasonable and proper if mailed at least ten (10) days before such disposition with postage prepaid and addressed to the Borrower at the address shown below.

12. No delay or failure by the Bank in the exercise of any right or remedy constitutes a waiver and no exercise by the Bank of any right or remedy will preclude the exercise of any other right or remedy.

13. If more than one party signs this Agreement, the term "Borrower" shall refer to all parties, and all such parties will be jointly obligated.

Executed and delivered at Lemmon, South Dakota this 6th day of December, 1979.

Address	*Borrower*
Hettinger, ND	/s/ IVEN FELT
Hettinger, ND	

SCHEDULE A

To Security Agreement Dated 11-24-80

1—1953 Oliver 88 Tractor
1—1956 International 300 Tractor
1—1960 Lindsey Harrow
1—1962 International Cultivator
1—1957 John Deere 12′ Surflex
1—1960 John Deere Rod Weeder
1—1965 International 9′ Mower
1—1967 Mayrath 32′ Grain Elevator
1—1971 Bear Cat Grinder-Mixer, Model 1250
1—1972 John Deere 16′ Tool Bar
1—1966 John Deere 95 SP Combine
2—1974 John Deere 8′ Grain Drills
1—Foster Chaff Wagon
1—1972 John Deere Tandem Disk
1—1976 Vermeer Round Baler
1—Lahman Stackmover
1—1956 IHC 300 Utility Tractor
1—1978 Massey Ferguson 5 Wheel Rake
1—1969 John Deere 4020 Tractor
1—1978 Versatile 18′ SP Swather
1—1974 Farmhand Feeder Wagon
1—1973 Deutz 4WD Diesel Tractor, Sr. #5861389

November 24, 1980

Borrower

/s/ IVEN FELT

Exhibit C

$15,300.00
INST'S DUE Dec 1st
No. 110003

Name(s) Iven Felt Farm & Ranch
Installment Note Lemmon, South Dakota

July 13, 1979

For value received, the undersigned jointly and severally promise to pay to the order of

FIRST NATIONAL BANK IN LEMMON

at its office at

Lemmon, South Dakota

Fifteen Thousand Three Hundred and no/100 - - - - - - - ($15,000.00) with interest thereon from date hereof at the rate of 11 percent per annum as indicated in No. 2 below, in 4 installments as follows: $3,825.00 on December 1, 1979, and on the 1st day of December, 1980, and a like and equal sum on the same day of each year thereafter until December 1, 1982, when the remaining balance of $3,825.00 shall be due and payable. If any payment is more than twice the regular payment it is a BALLOON PAYMENT which the bank does not undertake to refinance if not paid when due.

1. Each installment includes interest and shall be applied first upon accrued interest and the balance upon principal.
2. Interest on all unpaid principal shall be paid in addition to and at the maturity of each installment. The amount of interest to be added to the first scheduled installment is $820.15 and to the last scheduled installment is $420.75.

3. Interest has been paid to the maturity of each installment.

4. Interest on the principal balances from time to time outstanding shall be paid at the maturity of the final installment.

The holder of this note may at its option without notice declare this note immediately due and payable for the entire unpaid principal hereof plus accrued interest hereon upon or at any time after the occurrence of any of the following events: any default in the payment of this note; and default under the terms or conditions of any security agreement or other note, obligation, instrument, undertaking or agreement concurrently herewith or heretofore or hereafter given to or acquired and held by the holder hereof to which any maker, co-maker, indorser, surety or guarantor hereof is a party; if the holder hereof deems itself insecure; or if there is such a change in the condition of affairs, financial or otherwise, of any maker, co-maker, indorser, surety or guarantor as in the opinion of the holder hereof increases the risk.

Each maker, co-maker, indorser, surety and guarantor hereof jointly and severally agrees to pay this note and guarantees payment hereof and waives demand, presentment, protest and notice of dishonor, and consents to any extensions and renewals hereof without notice, and consents to the release by the holder hereof with or without consideration of any of them and exonerates the holder hereof from all duty and obligation to make demand on anyone for payment of any ... ... — ... ... — ... ... — ... ... — ... ... — ... — ... ... anyone of nonpayment thereof or to collect or sell the same and consents to

the extension, renewal, exchange, surrender or release by the holder hereof with or without any consideration of such collateral, and agrees that when or at any time after this note becomes due the holder hereof may without notice offset or charge this note against

---

1. Proceeds of Note			$15,300.00
2. Other Charges consisting of:			
Official Fees for lien search, perfection and release ...	$	3.00	
Premium for property insurance	$	—	
Premium for credit life insurance	$	—	
Premium for credit life and disability insurance	$	—	
Total Other Charges	$	3.00	
Less: Cash Paid, if any ...	$	3.00	
Total Other Charges Financed			$ —0—
3. Amount Financed (1 plus 2)			$15,300.00
4. FINANCE CHARGE, consisting of:			
Prepaid Finance Charge ..	$	—	
Other (specify) interest ...		$3,174.65	
Total FINANCE CHARGE			$ 3,174.65
5. Total of Payments (3 plus 4)			$18,474.65
6. ANNUAL PERCENTAGE RATE ...			11 %
7. With Long Term Insurance:			
(a) Total of payments	$	= Exhibit F	
(b) Total monthly payment	$		

---

any bank account or other account then maintained by any of them with the holder hereof or then existing between any of them and the holder hereof and to pay any deficiency, and agrees in case of any default to pay all costs of collection, including reasonable attorneys' fees, and interest on the principal portion of each delinquent installment at the per annum rate specified above.

Upon prepayment of this note in full, a refund of any unearned finance charge will be made computed on an actuarial basis. Any unearned insurance premium paid in connection with this transaction will be rebated, upon application, by the agent writing the insurance on the basis of the rate of 78's.

SECURITY. In addition to the right of offset as explained above, this note and any extensions or renewals of it are ☐ unsecured ☒ secured by a security agreement or other evidence of security interest covering the following described property (the "Collateral")

1978 Deutz model 130-06 4 wheel drive tractor, serial #5861389., adv. livestock, feed, machinery

together with all parts, accessories, improvements and accessions thereto and substitutions and replacements therefor, by all property of the same type or kind as hereafter comes in to the possession or control of the bank, by all proceeds and products of the Collateral, and by an assignment of all fire, theft, collision and other insurance required by the bank.

INSURANCE

PROPERTY INSURANCE which is required by the security agreement covering the Collateral may be

obtained by the Borrower through any person of his choice. Such insurance is available through the bank at a cost of $———— for a ——— year term.

CREDIT LIFE AND DISABILITY INSURANCE. Neither credit life nor disability insurance is required in connection with this transaction. However, this insurance may be obtained through the seller for the term of this contract at the cost indicated below, provided that each insured as of the date hereof is able to perform usual activities or occupation and otherwise qualifies for such insurance.

☐ Joint Spouse Credit Life Insurance .. $———
☐ Single Life Credit Life Insurance .... $———
☐ Credit Disability Insurance ..... $———

We desire joint spouse credit life insurance. WE ARE BOTH UNDER 66 YEARS OF AGE AND ARE CO-SIGNERS OF THIS NOTE.

Date ——— ———————— Age ———
Signature of 1st Signer of Note

Date ——— ———————— Age ———
Signature of 1st Signer's Spouse

I desire credit ☐ life and ☐ disability insurance. I AM UNDER 66 YEARS OF AGE.

Date ———————— Age ———
Signature of 1st Signer of Note

THIS IS NOT A COMMITMENT TO PROVIDE INSURANCE.

Bank is authorized to charge my checking account for the monthly installments ☐ (Check box if desired).

Undersigned borrower acknowledges receipt of a copy of this note on the date hereof.

Address Hettinger, North Dakota

Signature ✔ /s/ IVEN FELT

Address Hettinger, North Dakota

Signature ✔ /s/ WILMA FELT

BANK COPY

Exhibit D

STATE OF SOUTH DAKOTA
COUNTY OF PERKINS, ss.

IN CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT

FIRST NATIONAL BANK IN LEMMON,
Lemmon, South Dakota, a
banking corporation,
Plaintiff,

- VS -

IVAN FELT and
WILMA FELT,
Defendants.

SUMMONS

THE STATE OF SOUTH DAKOTA TO THE ABOVE NAMED DEFENDANTS, GREETINGS:

You are hereby summoned and required to answer the Complaint of the Plaintiff in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office, the post office address of which is Professional Building, Mobridge, South Dakota, within thirty (30) days after the service of this Summons upon you, exclusive of the day of such service; and in case of your failure to answer the said Complaint within that time, Judgment by Default may be rendered against you as requested in the Complaint

Dated at Mobridge, South Dakota, this 1st day of July, 1982.

/s/ NEWELL E. KRAUSE
Newell E. Krause of Krause & Seiler
Attorney for Plaintiff
P.O. Box 397, Professional Building
Mobridge, South Dakota 57601-0397

[handwritten, illegible] by Sheriff Kolb—July 6, 1982

Supreme Court, U.S.
FILED
SEP 23 1985

CASE NO. 84-1918

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1984

IVEN L. FELT and WILMA FELT,
Petitioners,

v.

FIRST BANK OF SOUTH DAKOTA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of
Appeals for the Eighth Circuit

PETITIONERS' BRIEF IN REPLY TO RESPONDENT'S BRIEF

Richard Hopewell
Wesley D. Schmidt
[on the brief]
423 S. Phillips Ave.
Sioux Falls, S.D.
57102
[605] 334-0982
Petitioners' Counsel

Horace R. Jackson
Gene N. Lebrun
Lynn, Jackson, Shultz
& Lebrun, P.C.
P.O. Box 8110
Rapid City, S.D. 57709
[605] 342-2592
Respondent's Counsel

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF FACTS & PROCEDURAL HISTORY	1
ARGUMENTS	4
I. STATUTE OF LIMITATIONS IS TOLLED BY RESPONDENT'S CONTINUING FAILURE TO COMPLY WITH 15 U.S.C. §§1635, 1639	4
II. PETITIONERS STATE CLAIM UPON WHICH RELIEF CAN BE GRANTED BY 15 U.S.C. §1639	5
III. PETITIONERS STATE CLAIM UPON WHICH RELIEF CAN BE GRANTED BY 15 U.S.C. §1635	6
IV. PETITIONERS STATE CLAIM UPON WHICH RELIEF CAN BE GRANTED BY 42 U.S.C. §1983	7
PRAYER FOR RELIEF	8
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

	Pages
Bailey v. Glover, 88 U.S. 342 (1875)	4-5
First Bank v. Felt, 368 N.W.2d 588 (S.D. 1985)	1,3,4
Jones v. Trans Ohio, 747 F.2d 1037 (6th Cir. 1984)	4,5
Fourth, Seventh & Fourteenth Amendments to U.S. Constitution	8
15 U.S.C. §1635	2,3,5,7,8
15 U.S.C. §1639	2,5,6,7,8
15 U.S.C. §1640	4,8
42 U.S.C. §1983	7,8

STATEMENT OF FACTS AND PROCEDURAL HISTORY

In reprint at pages 28a-47a of Respondent's Brief, Petitioner Iven Felt executed the following promissory notes in favor of First Bank in Lemmon, South Dakota:

Date	Sum	Payment due
7-13-79	$15,300*	12-1-82
5-4-81	39,269*	11-1-81
5-4-81	25,000*	11-1-81
5-4-81	60,000	11-1-81
5-16-81	7,000	11-1-81
6-8-81	3,500	11-1-81

Petitioner Wilma Felt co-signed the promissory notes above marked with asterisks.

The history of the Parties' banking relationship and status of Respondent's state court action for summary judgment on the foregoing notes is found in First Bank of South Dakota v. Felt, 368 N.W.2d 588, 590-91(S.D. 1985):

> "The Defendants Iven and Wilma Felt have made various transactions with Plaintiff First National Bank for about 20 years. Defendants have always made one payment a year in the fall or after selling the farm products. But after 6 years of no crops -- hail and drought -- there wasn't much to pay with. Even after Defendants made a good sized payment in the fall of 1981, Plaintiff wanted more collateral on the notes at the bank, car title and a third mortgage on the land. Defendants felt that if their collateral had been enough to loan the credit on, it still should be sufficient.

> After making a security check the end of June, 1982, the Bank President asked what would Defendants do if the Bank foreclosed. Defendant Iven Felt said he couldn't see why the Bank couldn't work with him, he could pay it back. But a few days later, July 6, 1982, the Sheriff served Defendants a Summons and Complaint."

In their Answer to Respondent's foregoing 6 July 1982 Complaint for recovery on the aforesaid promissory notes in the Eighth Judicial Circuit Court of South Dakota in and for Perkins County, Petitioners filed a counterclaim based on 15 U.S.C. §§1635 and 1639.

On 12 December 1983, Petitioners initiated this action before the U.S. District Court of South Dakota, and on Respondent's 25 January 1984 motion, the Court, without findings of fact and conclusions of law, dismissed Plaintiffs' Complaint by order of 2 February 1984:

> "for the reason that Plaintiff's Complaint does not state a claim upon which relief may be granted".

By per curiam 18 July 1984 decision of the Eighth Circuit Judges of the U.S. Court of Appeals, the District Court's order was affirmed on the ground that:

> "The allegations of the complaint center on non-compliance with 15 U.S. C. §1635, which provides a right of rescission as to consumer credit transactions in which a security interest is acquired or retained in real property used

> as the residence of the person to whom credit is extended. The security interests involved in this case were in livestock, feed and equipment, not real estate. Therefore, 15 U.S.C. §1635 is inapplicable, and the district court properly dismissed the complaint".

On 23 July 1984, Respondent renewed in state court its motion for summary judgment on the promissory notes herein; on which motion summary judgment in the amount of $157,795.05 was granted by the state court on 4 September 1984; which summary judgment was the subject of Petitioners' appeal in First Bank of South Dakota v. Felt, supra.

Pursuant to Petitioners' 25 September 1984 motion for enlargement of time, this Court's Associate Justice Harry A. Blackmun herein granted Petitioner 30 additional days to file the petition for writ of certiorari herein. Said petition was receipted by this Court's Clerk on 14 November 1984.

Aforesaid pending petition by the Petitioners to this Court and appeal to the Supreme Court of South Dakota notwithstanding, Respondent initiated the 7 February 1985 issuance of a writ of execution ordering the Perkins County Sheriff to satisfy Respondent's aforesaid $157,795.05 summary judgment by levy:

> " . . . out of the personal property of said Judgment Debtor, and if sufficient personal property cannot be found, out of the real property belonging to Defendants . . .".

By its 6 March 1985 letter referred to in its 9 May 1985 letter on file herein to

this Court's Assistant Clerk Edward C. Schade, Respondent confirmed with Mr. Schade that the 13 November 1984 petition for writ of certiorari herein was a "dead file".

On 8 March 1985, the Perkins County Sheriff seized by levy and thereafter sold all the equipment and livestock on Respondents' land in partial satisfaction of the aforesaid $157,795.05 summary judgment.

On 22 May 1985 First Bank of South Dakota v. Felt, supra at 592, held that Petitioners state claims for relief under 15 U.S.C. §1640, and remanded said claims to the state trial court for further proceedings.

ARGUMENTS

I. STATUTE OF LIMITATIONS IS TOLLED BY RESPONDENT'S CONTINUING FAILURE TO COMPLY WITH 15 U.S.C. §§1635, 1639

At page 1 of its Brief, Respondent asserts that Petitioners' 15 U.S.C. §1639 claim is barred by the one-year statute of limitations in 15 U.S.C. §1640(e). Respondent therewith fails to address the question of whether this statutory provision was subject to the doctrine of equitable tolling. The Sixth Circuit has held that the statute is subject to the doctrine of equitable tolling. Jones v. Trans Ohio Savings Association, 747 F.2d 1037, 1041 (6th Cir. 1984). Under this doctrine, the statute of limitations [15 U.S.C. §1640(e)] is tolled when a defendant fradulently conceals the facts which give rise to the cause of action. This federal fradulent concealment rule was first enunciated in Bailey v.

Glover, 88 U.S. 342 (21 Wall.) 22 L.Ed 636 (1875). The Sixth Circuit in Jones concluded that:

> "For application of the doctrine of fradulent concealment, the one year period will begin to run when the borrower discovers or has had a reasonable opportunity to discover the fraud involving the complained of TILA violation. To conclude otherwise would be to accede to the machinations of those who would hope to thwart Congress' purpose and the ability of the federal courts to ensure that purpose's fruition; the prevention of fraud in consumer credit rransactions". Jones v. Trans Ohio Savings Association, 747 F.2d at 1041.

Plaintiffs-Appellants contend that Defendants fradulently concealed the facts which would have given rise to the cause of action. They concealed these facts by their failure to make the disclosures required by 15 U.S.C. 1635 and 15 U.S.C. 1639. Inasmuch as no disclosure has ever been made, the Court should find that the statute was tolled by the fraud of the Defendants in failing to disclose until the Plaintiffs should reasonably have discovered the facts which make up their cause of action.

II. PETITIONERS STATE CLAIM UPON WHICH RELIEF CAN BE GRANTED BY 15 U.S.C. §1639

On the face of five promissory notes (RB(35a-47a)) which are the subject of Petitioners' 15 U.S.C. §1639 claim herein, Respondent failed to disclose to Petitioners information required by 15 U.S.C. §1639(a)(4)(7)(8)(b):

"(a) Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit plan shall disclose each of the following items, to the extent applicable: . . .

(4) . . . the amount of the finance charge . . .

(7) The default, delinquency, or similar charges payable in the event of late payments.

(8) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates . . .

(b) . . ., the disclosures required by subsection (a) of this section shall be made before the credit is extended, and may be made by disclosing the information in the note or other evidence of indebtedness to be signed by the obligor."

III. PETITIONERS STATE CLAIM UPON WHICH RELIEF CAN BE GRANTED BY 15 U.S.C. §1635

15 U.S.C. §1635(a) in part provides:

" . . . in . . . any consumer credit transaction in which a security interest, <u>including any such interest arising by operation of law</u>, is . . . acquired in . . . the residence of the person to whom credit is exten-

> ded, the obligor shall have the right to rescind the transaction . . . following the . . . delivery of disclosures required under this section and all other material disclosures required under this part . . . ". (emphasis added.)

To be noted in greater specifics at page 3, supra, a state court writ of execution on 7 February 1985 ordered the county sheriff to satisfy Respondents' summary judgent on the promissory notes at issue by levy and sale on Petitioners' property. Through this operation of law, Respondent retains the right to have Petitioners' residence sold in satisfaction of the balance purportedly owing on the aforesaid state summary judgment. Petitioners are therewith vested by 15 U.S.C. §1635(a) with the right to rescind their credit transaction herein with Respondent, and the right to be notified by Respondent in the promissory notes (RB(28a-47a)) of the particulars of their right to so rescind the notes.

As Respondent has failed to make the foregoing disclosures, Petitioners state a claim by which relief can be granted pursuant to 15 U.S.C. §1635.

IV. PETITIONERS STATE CLAIM UPON WHICH RELIEF CAN BE GRANTED BY 42 U.S.C. §1983

Under color of unconstitutional and ultra vires state statutes, executive actions and judicial proceedings on record with the Perkins County Circuit Court (Civ. 82-1030; Cr. 85-03) and decisions of the U.S. Bankruptcy Court (584-00110) of South Dakota, Respondent continues to deprive Petitioners

of their rights under the U.S. Constitution:

> " . . . to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures . . . " guaranteed by the Fourth Amendment;
>
> "of trial by jury" guaranteed by the Seventh Amendment; and
>
> "of . . . liberty, or property, without due process of law . . . " guaranteed by the Fourteenth Amendment.

PRAYER FOR RELIEF

On this motion that this Court take judicial notice of the state criminal and civil proceedings against Petitioners described at pages 1-4, 7 supra, and on further motion that their Complaint and prayers for relief be hereby amended to conform with facts and statutory claims of this brief and any decision that may be forthcoming by this Court; Petitioners pray that this Court:

(1) grant Petitioners' hereby renewed:

(a) 12 December 1983 motion for summary judgment in favor of Petitioners against Respondent for relief provided by 15 U.S.C. §§1635, 1639, 1640 and 42 U.S.C. §1983, and

(b) 12 December 1983 and 6 January 1984 motions to rescind and nullify the credit transactions (RB(35a-47a)) and purported security agreements (RB(19a-27a)) with Respondent, and therewith

(2) remand Petitioners' summary judgment on matters of law back to the U.S. District Court of South Dakota for determination by trial of damage amounts Respondent is obligated to pay Petitioners pursuant to 15 U.S.C. §§1635, 1639, 1640 and 42 U.S.C. §1983.

If this Court does not grant Petitioners' foregoing motions and prayer, Petitioners in the alternative pray that this Court grant Petitioners' petition for writ of certiorari to review the decisions by the U.S. District Court of South Dakota and the U.S. Circuit Court of Appeals for the Eighth Circuit dismissing Petitioners' Complaint; and award Petitioners their costs and disbursements, together with any other relief which the Court shall deem just and equitable toward restoring Petitioners' federal constitutional and statutory rights in pursuing their action herein.

Respectfully submitted this 20th day of September, 1985.

Richard Hopewell
Wesley D. Schmidt
[on the brief]
423 South Phillips Avenue
Sioux Falls, S. D. 57102
[605] 334-0982

Counsel for Petitioners

CERTIFICATE OF SERVICE

On 20 September 1985 by first class mail, postage prepaid, I served three copies of this Petitioners' Brief in Reply to

Respondent's Counsel of record:

Horace R. Jackson
Gene N. Lebrun
Lynn, Jackson, Shultz & Lebrun, P.C.
P.O. Box 8110
Rapid City, S.D. 57709
[605] 342-2592

Counsel for Respondent

/s/ Richard Hopewell